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DIVORCE

A Social Interpretation

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To My Wife

MARTHA ANGELINE

THE JOY OF MY YOUTH AND MY
COMPANION STILL

PREFACE

Divorce like death often is spoken of in a jocular vein, a manner of speech employed as a defense-mechanism against the shock of tragedy. Divorce is not the cause of marriage breakdown, but its result. As such, both in its personal and in its social aspects, it is one of the most serious problems of contemporary civilization and yet one least adequately apprehended and understood.

It is as an attempt to contribute to a better knowledge of the nature and of the significance of this problem that this book is presented. The causes of marriage dissolution ending in divorce lie deeply embedded in human nature, in the psycho-physical environment, and in the social order, hence the historical, the statistical, and the expository approaches to the interpretation of the phenomena. If the book makes any contribution to the solution of the problem, it will be as the result of a better comprehension of the total situation with which we have to deal.

Such portions of the material of this book as appeared in a previous monograph, "Divorce, a Study in Social Causation," which I submitted as a doctor's dissertation in Columbia University, copyrighted in 1909, are reproduced by permission of the Columbia University Press, for which my appreciation is acknowledged.

J. P. LICHTENBERGER.

UNIVERSITY OF PENNSYLVANIA,
August, 1931.

CONTENTS

PREFACE

vii

PART I · *The Phenomenon*

CHAPTER I. *General Introduction*—THE STATEMENT OF

THE PROBLEM	3
Orientation	3
The Scientific View	7
The Nature of Marriage	12
The Nature of Divorce	16

A. History and Description

CHAPTER II. DIVORCE IN PRELITERATE SOCIETIES 19

The Origin of Divorce	20
Early Aspects	25
The Form of Marriage and Its Effects on Divorce	30

CHAPTER III. DIVORCE IN ANCIENT LAW CODES 37

The Code of Hammurabi	38
The Laws of Manu	41
The Mosaic Law	44
The Teachings of Jesus	50
Early Roman Law	54
Early Germanic Law	59
Anglo-Saxon Laws	62
Ancient Laws and Institutes of Wales	66
The Brehon Laws	69

CHAPTER IV. DIVORCE IN MODERN CIVILIZATION 74

The Rise of Ecclesiastical Marriage	77
The Influence of Asceticism	79
The Doctrine of Sacraments	82
Marriage as a Sacrament	85
Effects upon Divorce	88
Effects of the Protestant Reformation	91
The Civil-contract Theory	95
The Present Status	98

CHAPTER V. THE TREND OF DIVORCE IN THE UNITED STATES	100
Sources	100
The Divorce Trend	103
Significance of the Trend	106
Comparison with Foreign Countries	108
Variations of the Trend	112
Geographic Distribution	112
Urban and Rural Comparisons	118
Rates in White and Colored Populations	123
Variation According to Party to Whom Granted	127
Variations in Regard to Cause	130
Conditions as to Children	135
 <i>B. Inadequate Explanations of the Trend</i>	
CHAPTER VI. COMPARATIVE STATISTICS	141
Introductory	141
Divorce Increase Compared with Population Growth	142
Marriages in the Total Population	145
Marriages in the Adult Unmarried Population	148
Divorce Increase Compared with Married Population Growth	149
Divorce and Marriage Rates Compared	151
CHAPTER VII. CIVIL DIVORCE LEGISLATION	154
Changes in Marriage Laws	155
Changes in Divorce Laws	162
Effects of These Changes	170
CHAPTER VIII. MOVEMENTS FOR UNIFORM DIVORCE LAWS AND THE FEDERAL AMENDMENT	187
Uniform Divorce Laws	188
The Federal Amendment	197
Arguments for and against the Federal Amendment	201
CHAPTER IX. ECCLESIASTICAL DIVORCE LEGISLATION	210
The Protestant Episcopal Church in the United States	212
The Presbyterian Church in the United States	217
The Methodist Episcopal Church	225
The Reformed Church in America	231
General Synod of the Evangelical Lutheran Church in the United States of America	234
The Congregational Churches in the United States	237
Inter-Church Conference on Marriage and Divorce	241

PART II · *The Interpretation*

CHAPTER X. <i>Introduction to Part II</i> —THE EXPLANATION	247
The Failure of Existing Controls	247
Inadequacy of Current Explanations	250
Disintegration as a Process	255
The Processes of Culture Change	258
 C. <i>External Influences and Pressures</i>	
CHAPTER XI. ECONOMIC CHANGE	262
The Problem of Social Adaptation	262
The Economic Factor	263
Costs of Economic Progress	269
Modern Standards of Living	271
Pressure of Modern Economic Life upon the Home	273
Passing of the Economic Function of the Family	277
The Economic Emancipation of Women	280
Obsolescence of the Patriarchal Form of Family Organization	285
CHAPTER XII. THE PROGRESS OF LIBERALISM	289
The Democratic Movement	289
Liberalism and the American Spirit	294
American Individualism	296
The Popularization of Law	299
Increase in Popular Learning	303
Improved Social Status of Women	306
Diminishing Primary Group Controls	309
CHAPTER XIII. REVISED ETHICAL AND RELIGIOUS VIEWS	312
Religious Conservatism	312
Passing of the Dogmatic Age	315
Revised Ethical Concepts	319
Views of Liberal Clergymen	322
Intolerance of Evils Formerly Endured	327
An Equal Standard of Morals	329
Higher Ideals of Domestic Happiness	331
 D. <i>Internal Tensions and Strains</i>	
CHAPTER XIV. CHANGING CONCEPTS OF MARRIAGE	334
Traditional Marriage Norms	335
Changed Attitudes toward Marriage Functions	339
The Romantic Complex	340
The Demand for Compatibility	345
Freedom versus Coercion	348

Voluntary Parenthood	350
Premarital Sex Experience	356
CHAPTER XV. SEXUAL MALADJUSTMENT	359
The Modern Sexual Revolution	359
The Sex Factor in Modern Marriage	364
Inadequacy of Sex Knowledge	367
Lack of Understanding of Sex Needs	373
Sexual Incompatibility	380
The Sex Factor in Divorce	383
The Ultra Sex Obsession of the Present	386
CHAPTER XVI. CONFLICTING BEHAVIOR SITUATIONS AND PROCESSES	390
Tensions versus Pressures	390
Conflicting Interests and Attitudes	393
Specific Culture Conflicts	398
Pathological Factors and Conditions	403
Divergent Individualization	409
 PART III · <i>Conclusions</i>	
CHAPTER XVII. PROBABLE OUTCOME	419
Will Marriage Survive?	419
A Problem of Transition	426
Proposed Remedies	429
Reactionary	429
Conservative	432
Radical	435
Constructive	446
Probable Future of Marriage and Divorce	451
INDEX	461

PART I
The Phenomenon

A. HISTORY AND DESCRIPTION

B. INADEQUATE EXPLANATIONS OF THE TREND

CHAPTER ONE

GENERAL INTRODUCTION—THE STATEMENT OF THE PROBLEM

Orientation

THE DISINTEGRATION OF MARRIAGES CONSTITUTES ONE OF the major problems of modern civilization. It is a matter of common knowledge that divorces are on the increase throughout the Western world and particularly in the United States. This phenomenon has challenged the attention of socially minded persons—moralists, religionists, scholars, and statesmen. Proportionally with the spread of information concerning the nature and the rapidity of this increase have people been disturbed as to its significance—witness the extensive treatment of the subject in the public press and in contemporary drama, also the great volume of articles, monographs, and books which have appeared in this field in recent years. Naturally there is great diversity of views and there are few subjects of public interest which have provoked more vigorous controversies as to the inherent nature of the problem and as to the most advantageous methods of dealing with it.

The chief justification for the appearance of another book in this field is the present availability of data for a more extensive survey and analysis of divorce than hitherto has been made and the change in interests and attitudes which now permit the whole subject to be viewed in a more dispassionate and critical manner.

What, then, is the interpretation of the problem-phenomena of divorce? What is the explanation of the increasing frequency of divorce in terms of cause and effect?

The answer to these questions is determined very largely by the temperament and training of those who make the attempt.

To a large number of conscientious interpreters, who reason more or less deductively from certain assumed premises and from a static concept of society and who approach the subject mainly from the point of view of the institutional character of marriage, the increasing number of disintegrating marriages and the swift mounting of the divorce rate indicate that the institution is undergoing a rapid process of disorganization which seriously endangers its permanent existence. The premises laid down are the soundness and incontrovertible character of our traditional marriage ethics and the indisputable necessity of preserving the marriage institution in its historic form, that is, as it is at present constituted. Thus any deviation from accepted ethical standards or the breakdown of properly constituted individual marriages are signs of deterioration and are viewed as inimical to public welfare. Divorce is regarded as an evil *per se* which it is the business of the Church and of the State to suppress.

They regard the divorce problem, moreover, as an integral part of a general process of social deterioration which jeopardizes other social institutions along with that of marriage, which if unchecked, will lead ultimately to the undermining of the whole social structure of civilization. Specifically with regard to divorce, they hold that the causes of this retrograde movement are located in the increasing perversity of human nature and in the concomitant decay of social morality. This menace further is augmented by the growing laxity of law and of its administration with regard both to marriage and to divorce, together with a diminishing respect for authority and for the sanctions of established custom, tradition, religion, and law, which collectively constitute the bulwarks of the social order.

This situation calls for resistance and for redress. The logical methods, as prescribed, are to oppose these tendencies and to combat divorce by increasing restraints of inhibitory character. Among the methods advocated are: the urgent awakening of the conscience of individuals to a realization of the obligation of conformity, the intensification of moral and religious restraints, and the enactment of such reformatory laws as will lead to the suppression of the "evil."

To many other persons equally sincere, among whom the scientific world view has replaced the traditional one and the method of reasoning is inductive rather than deductive, and who regard marriage more from the point of view of its human relations than from that of its institutional character, this diagnosis of the divorce situation is unsatisfactory. Applying the same categories of scientific interpretation to social phenomena as to all others, they hold no presuppositions as to what any social situation ought to be. They regard society as dynamic and as undergoing continuous change. Thus moral standards are not deemed to be absolute, but relative, and express the social approval of values which emerge from human relations and experiences under given conditions; they are not therefore final and immutable, representing a fixed norm from which deviations may be measured in terms of the degree of deterioration. These values themselves change as conditions change and require re-formation and restatement in the light of new adaptations. If this were not true, these persons insist, it would be difficult to conceive of such a thing as moral progress except as it consists in increasing conformity to existing codes.

This attitude of mind opens up a wide field for social research. Divorce, from this point of view, constitutes, not a subject for condemnation, but one for investigation. If the institutional form of marriage is undergoing change and is losing its prestige, the causes should be sought.

If, as it is assumed frequently, the increase in divorces connotes a sudden change in human nature which is modifiable ordinarily, if at all, by long-continued processes, then the causes for this change should be investigated. Again, it may be pertinent to inquire whether the phenomena we are witnessing may not be the result of dynamic changes in the social environment; whether the readaptation of our social life to the new basis of our modern civilization may not result in individual maladjustments which tend to disrupt marriages. The question may even be raised as to whether the climbing divorce rate is, at least, partly the result of transitions due to progress. Investigations may reveal the fact that marriages today are not internally coherent and that with the lessening of many of the former restraints implicit in the patriarchal form of the family and in sacramental marriage, together with the removal of some of the external supports supplied by former social and economic conditions, they are simply falling apart because of this lack of internal moral and spiritual cohesion. Furthermore it may be necessary to consider the question whether traditional marriage *mores* may not be maladjusted to twentieth century ideas about sexual, economic, and other important relations, and whether they perchance exhibit the phenomenon of the "culture lag."

To this latter group of persons, then, the primary interest is in the investigation of the facts. They seriously may inquire whether the freer granting of divorces is an evil.¹ To them the divorce problem presents simply a most interesting phenomenon to be studied, analyzed, and explained.

At the outset of this work we desire that our point of view should clearly be understood and our purpose adequately comprehended. It is frankly that of this second group, that is, of the social scientists. We make no apology

¹ Cf. *Papers and Proceedings of the American Sociological Society*, Vol. III, pp. 150 ff.

for our advocacy and use of the scientific procedure in the study of the problem. We believe that it is only by the employment of the methods of modern scholarship that the real understanding of it is to be obtained. In approaching the subject of divorce in this way we can investigate it as a matter of public importance without the dogmatic-emotional bias of the reformer and without commitment to any program in regard to its treatment. Thus we hope to be able to examine whatever sources are available with fairness and to deal with the facts as we find them. It is concededly a difficult task for one to deal with a subject of such high emotional tone without being accused of prejudice by those from whom he may differ; it is difficult also for many persons to distinguish clearly between description and defense, so that one who essays the former often is charged with the latter. Nevertheless we make the attempt. Our purpose, then is to *explain*, not to *justify*, the present divorce situation.

The Scientific View

The martyr of the passing age is often the prophet of the new. What Auguste Comte and Herbert Spencer saw so clearly in regard to new methods of study in the realm of social science, as in all others, and expressed so fearlessly, regardless of the criticisms which these views provoked, is rapidly becoming the accredited outlook of our day. The spirit of our age is dominantly scientific. "The basis of truth has been broadened. Natural law replaces supernaturalism as a first principle. This leads to the triumph of a secular interpretation of events, and prepares the soil for the growth of a scientific world view . . . The foundations of belief are to be sought in the world of experience. Exploration and investigation, an empirical point of view, replaces dependence upon authority. Men now stand on the threshold of a world of ascertainable facts. They take cognizance of themselves as free agents . . . An ever-

broadening field of inquiry is thrown open to the diligent investigator, bent on charting the coastline of the new and unexplored world that stretches out before him."¹

The physical sciences such as astronomy, geology, physics, and chemistry, long since have passed over from the realm of the theologico-metaphysical to that of the scientific. The social sciences like history, economics, and sociology, lag behind the physical, not in principles and methods of interpretation, but only in degree of accomplishment and in popular recognition.

The analytical and inductive approach to the study of human society has revealed the fact that social institutions follow no arbitrarily fixed program in their development but evolve through the natural processes of social adaptation; that they are all undergoing changes in the direction of readjustment of constitution to conditions. At least two consequences of this knowledge are of interest to us.

In the first place, the recognition of this positive principle of social development, this discovery of causal sequences in the domain of social life and institutions, as in every other range of phenomena in our universe, opens the whole social realm to scientific study. It no longer is necessary to posit an "inscrutable will" as an explanation of human events. The causes of social change are resident within society itself. They are to be found in the integrated reactions of human beings to each other and to the physical and psycho-social environment. Their study affords what Auguste Comte calls "scientific prevision" in which "we have abandoned the region of metaphysical idealities to assume the ground of observed realities by the subordination of imagination to observation."² This method prophesies interpretations in social phenomena in harmony with the facts of life and which are subject to verification, and it promises no less compensation for thoroughgoing

¹ WALLACE, WILLIAM K., *The Scientific World View*, pp. 95-97.

² *Positive Philosophy*. Martineau translation, p. 456.

investigation here than in other fields. Thus in establishing the scientific procedure in the interpretation of social phenomena, a new basis for the study of divorce is afforded which permits it to be investigated and explained in terms of causes and consequences, as any other phenomenon, simply as a matter of human interest.

Rightly considered, in the second place, this way of viewing the matter, it would seem, should effect a high degree of mental poise in the midst of changes which, to many, appear to threaten the existing order. If the institution of marriage were an invention and not a growth, if it rested on the uncertain predilection of some law-giver either human or divine and not on the inherent necessities of human nature, then it might be in imminent danger of passing away. If, therefore, the institution of marriage seems in danger of destruction, as many writers at the present time seem prone to believe, it is reassuring to know that it rests on no such insecure foundation. In the form created by adjustment to the needs of humanity at any particular time it has existed always and everywhere. There is no more likelihood that the institution of marriage will be eliminated because it happens, at the moment, to be somewhat maladjusted to our present internal marriage conditions than that our economic or political institutions will cease to exist because of similar maladjustments to the immediate interests which they serve. They have undergone transmutations in the past and doubtless will continue to do so in the future, without annihilation. What every intelligent student of society expects, and what many serious-minded persons seek to promote, is the modification of marriage to meet existing needs and the reconstruction of the *mores* necessitated thereby.

Traditionally minded persons always are disturbed by deviations from customary ways and from established standards. It would not be a new experience in the perspective of history if we should discover that some of the

tendencies and changes which today seem to many to be retrograde should turn out finally to be steps toward progress. Not infrequently have phenomena been attributed to causes other than those which have produced them. This has happened quite often in previous efforts to interpret physical phenomena, and until we have become more familiar with the processes of social causation, mistakes are as likely to be frequent in the explanation of social facts.

The time has arrived, then, for the consideration of our social institutions on the basis of history and experience. The inertia of the public mind, the static influence of traditional ethics, and the peculiar protection of religious sanctions long have impeded the scientific interpretations in this field. We have been slow to assert what today is established, that human society is a part of the cosmic universe, that it is subject to the same processes and laws, and that it manifests the same orderly sequences which are found in every other realm.

Speaking of divorce William E. H. Lecky says: "There is probably no other branch of ethics which has been so largely determined by special dogmatic theology, and there is none which would be so deeply affected by its decay."¹ Even as late as 1869 when Lecky published his volumes, public sentiment in regard to social questions in general rested to a large degree upon ideas and habits of thinking established by traditionally minded religious leaders. Theirs was the dominant influence in molding public opinion and in shaping legislation. But a change of views and attitudes have developed rapidly. The results of secular studies, pursued through disinterested methods of research, which have become very extensive, together with the growing recognition of the applicability of science to social solutions, have contributed largely to this change. People in increasing numbers today are becoming tolerant

¹ *History of European Morals*, Vol. II, pp. 371-372.

of scientific interpretations and are coming more and more to demand them.

It would be worse than useless, therefore, to attempt the explanation of the divorce situation today by means of categories of thought and ethical concepts which were in vogue even a half century ago. Such a course would lead inevitably to a method of dogmatizing as ineffectual as it is antiquated. What is needed is to bring the subject out into the open, to throw upon it the same white light of scientific investigation and constructive criticism to which we subject other phenomena of our contemporary life, let the results be what they may. The honest investigator is not responsible for what he finds.

Nothing is gained by the preservation of erroneous ideas and methods however time-honored or cherished they may be. We are arriving at the sincere conviction that ethical and social gains are contingent upon a better knowledge of the truth. The paramount need of our age is, according to Professor George Elliott Howard, "frankly to accept marriage and the family as social institutions whose problems must be studied in-connection with the actual conditions of modern social life. It is vain to appeal to ideas born of old and very different conditions. The guiding light will come, not from authority, but from a rational understanding of the existing facts. Small progress can be made while leaning upon tradition. The appeal to theological criteria is, no doubt, a matter of conscience on the part of many earnest men. Nevertheless the vast literature which seeks to solve social questions through the juggling with ancient texts seems in reality to be largely a monument of wasted energy. Much of it is sterile, or but serves to retard progress or to befog the issue . . . There is, in truth, urgent need that the moral leaders of men should preach actual instead of conventional social righteousness. It is high time that the family and its related institutions should be as freely and openly and unsparingly subjected

to scientific examination as are the facts of modern political or industrial life."¹

This attitude of frankness toward truth is one of the most encouraging signs of our time, and promises most for the help of humanity in the future. Foundations are being reëxamined in order that the superstructure of society may be reared, not only with greater stability, but with larger guarantee that it will conserve the best interests of all its members. The futility of the attempt to rationalize the causes of social phenomena on the basis of abstract speculation has been abundantly demonstrated by much of the current literature of our subject.

The Nature of Marriage

It is vitally important in considering marriage, particularly as it bears upon the subject of divorce, that the significance of its twofold aspect should be appreciated, namely, its static or institutional character, and its dynamic nature as a phase of human relations. In other words, when we speak of marriage we may have in mind, on the one hand, a phase of social organization; a social institution which has a long history; one which in the course of its development has undergone progressive changes in its form, which now has a fixed status in social usage, and is defined specifically in the law. On the other hand, we may be thinking concretely of persons who have entered into a definite type of relations with each other which we call marriage; a relationship which is institutional in its outward form and is sanctioned by law, but one in which internally there is a complex of adjustments of a purely personal character within the sphere of their intimate relations involving sex, temperament, habits, personality traits, economic arrangements, and a host of other matters of private concern.

¹ *History of Matrimonial Institutions*, Vol. III, pp. 223-224.

Viewed as an *institution*, marriage is not a ready-made gift to mankind but a product of social experience and habit. "Those in our day who talk so much about the sacredness of marriage can know but little about its history."¹ It is, at any time, the group sanction of the existing sex *mores*. It always has been, according to the testimony of historical and anthropological students, an "elastic and variable usage," hence the difficulty of precise, and at the same time, comprehensive definition. In general, however, we may say that it is the institutionalizing of those more or less restricted, more or less enduring forms of sexual relations between men and women which have existed everywhere in human society. No human group which has been subjected to study, however primitive in culture, has been found to be devoid of regulated marital relationships, and, ordinarily, the higher the degree of cultural development, the more clearly defined and standardized do these relationships become.

We need not, therefore, in the consideration of marriage, any more than in the case of other social institutions, as for example, the institution of property or of the state, have in mind any of the developed forms, but simply the customary and socially approved methods of mating and of living in the marriage relation.

On its institutional side, marriage has been concerned mainly with status, and interest in the subject has been concentrated upon that aspect, that is, upon the maintenance of the institution which defined and regulated the conjugal relations of husbands and wives. It is from this point of view that marriage has been regarded as constituting one of the main foundations of the social order.

This scarcely could have been otherwise in view of the historical developments which made of marriage a conventional relationship, often coercive in its nature and void of personal considerations, particularly for women,

¹ CAIRD, MONA, *The Morality of Marriage*, p. 79.

and surrounded it with ecclesiastical and legal safeguards. Thus theories in regard to the nature of marriage as a divine institution, as a legal entity, as well as those in regard to its inherent indissolubility, were the logical outcome.

As the result of social changes which of late have weakened its external buttresses, the institution, as such, exhibits a process of deterioration in the sense of its increasing inability to conform individuals to its established standards. The statistics of divorce in their upward trend thus represent the measure of institutional failure and, in the nature of the case, from the point of view of those who have their eyes fixed and their interests centered upon this aspect of marriage, can only be "viewed with alarm," and repressive measures consequently are advocated.

Marriage as a *human relationship* does not depend upon external authority either for its origin or for its perpetuation. It is not the product of intelligence, of forethought, nor of purposive planning. It is not the creature of law. It existed for ages before there was any law on the subject. It is the cause and the occasion of the *mores* and laws in which it came presently to be imbedded.

Theoretically, on its organic side, it has a natural origin in the biological propensities of human beings, which, as in the case of all other animals, lead to matings and to the reproduction of the species. Its continuance depends upon the reciprocal emotional attachments, sympathetic responses, learned reactions, and voluntary inclinations which develop and stabilize the relation as an aid in the maintenance of the joint enterprise of successful living together and of rearing children.

Historically, this natural relation has been so much complicated by both individual and group interests of other sorts and so largely invested with other functions, that its potentially voluntary character has been overlaid and, as a result, it has appeared as a coercive relationship,

initiated by capture, purchase, contract, parental selection, and other compulsory arrangements, and perpetuated irrespective of personal choice, through the social constraints of custom, religion, and law. Its institutional character thus became emphasized.

With the development of civilization these "other functions" have been differentiated out of the family and have become institutionalized in their own spheres. The family is no longer the economic, the political, the religious, or the basic social unit of society. As the forms of control associated with these social functions have become detached and have receded from the domain of the family, marriage is increasingly thrown upon its own resources as a voluntary relation in which its inner sanctions remain as the chief conditions of its survival.

It is this aspect of the subject that is of chief importance today. It is not so much that the institution of marriage is breaking down as that individual marriages are. This may affect one's attitude toward divorce. Hardly any one will question the utility of an institution based upon fundamental human needs, such as those which underlie marriage, but the institution must conform itself to those needs or it will perish. It may turn out upon investigation that this institution is out of adjustment to present requirements and that divorces are to some extent, at least, the expression of this condition.

The social well-being is as much a paramount consideration as ever, but it is a basic tenet of democracy that this can be established only by means which at the same time secure the well-being of the individual. The actual causes of the dissolution of marriage as a personal relation must be sought within the domain of these relations. Divorces will probably be found to be the end results either of institutional maladjustment or of internal disorganization, the adaptive remedy for which, in either case, is likely to be, not the forcible maintenance of the relation, but con-

structive means for improving the conditions which lead to the results.

The Nature of Divorce

There is probably no single subject within the range of public interest upon which there is greater misapprehension as to its real meaning and significance, which is calculated to prevent clear thinking and useful action, than that of divorce.

Among all those persons, whether moralists, religionists, reformers, or social scientists, who regard marriage as an institutionalized type of personal relations which in the past has served, and which in the future is destined still to serve, a useful purpose in the interest of human welfare, there is no difference of opinion as to the menace of marriage instability. To the extent to which successful marriages minister to individual happiness and to the social well-being, their breakdown is to be deplored. But when it is asserted that divorce "is an evil," that "divorce destroys marriages," or that "the divorce mill is grinding the family altar to powder" there is revealed a confusion of thought which beclouds the issue and tends to obscure and to distort the facts. It mistakes form for substance. It focuses attention at the wrong point and divides needlessly, in respect to the treatment of the problem, men of common attitudes and interests into diverse and often hostile groups.

Divorce is an effect, not a cause. It is a symptom, not the disease. It is safe to assert, except in the most attenuated institutional sense, that divorce never broke up a single marriage. It is adultery, cruelty, desertion, drunkenness, incompatibility, the decay or transfer of affection, and the like, that destroy marriages. Divorce never occurs until after the marriage has been completely wrecked—sometimes not until many years after. It is only when every other marriage tie has been severed, after the parties have discontinued their marital relations and have gone their

separate ways, when the marriage actually has no longer any existence in fact, that persons resort to the divorce court in order that the remaining artificial bond, created by the law, may be dissolved also. Divorce then may be defined as the readjustment of the legal status of persons formerly married but between whom marital relations already have ceased to exist.

The wedding ceremony, except in the mere formality of figurative statement, does not create marriage. Even legally it cannot constitute a valid marriage in the absence of certain conditions which today are regarded as requisite. It is merely the formal procedure through which the stamp of social approval is placed, according to custom and law, upon the entrance into the marriage relation. It is the actuality of that relationship which constitutes the essence of marriage. This view is attested by the fact that, if it can be shown that any condition essential to real marriage is lacking, such, for example, as normal mentality, proper age or physical competency, mutual choice and affection, voluntary agreement to enter into the marriage state, or if it has been consummated through duress or fraud, or within the prohibited degrees of relationship, any court of record will dissolve such a contract as having no validity and as not having constituted a true marriage at all, and the ceremony could not make it such.

It is obvious, therefore, that divorce in effect is nothing more than the annulment of the legal bond upon proof that the marriage *de facto* has been dissolved. This being the case, it is not divorce, as such, that should incur the disapproval and condemnation of those who deplore the facts and who seek to improve the situation. The real "evils" are those which destroy marriages. Respect for the "institution of marriage" can hardly be enhanced by insistence upon the preservation of the external form in those instances where the internal marital relations have become a mockery or where the actuality of these relations has disappeared.

It should be obvious, therefore, that to concentrate the reform attack upon divorce is to treat the effect for the cause and it becomes a case of misdirected effort. Very little, if anything, can be accomplished by this method. The results never can be commensurate with the energy expended. To legislate directly against disease or poverty is now admittedly futile. To employ constructive and indirect means for disease and poverty prevention, is to improve the public health and welfare and to increase confidence in and respect for the public service. The analogy here should be illuminating.

A general statement by Professor Francis Greenwood Peabody is apropos, if applied specifically to our subject. He says: "Antecedent to wise social practice there is needed a better social diagnosis. Before the Social Question can be answered, it must be understood. Before social diseases can be exterminated, social pathology must discover the nature and causes of epidemic distress."¹

¹ *The Approach to the Social Question*, p. 4.

A. History and Description

CHAPTER TWO

DIVORCE IN PRELITERATE SOCIETIES

ONE OF THE MOST FUNDAMENTAL PRESUPPOSITIONS OF SCIENTIFIC interpretation is that no subject can be understood fully apart from a knowledge of its origin and of its history. Out of this assumption has developed the historical method of study which in every domain of science has yielded perspective and continuity. In no specific field of inquiry has this method proved to be more fruitful than in that of the social sciences. Its application to the investigation of social institutions has resulted in revising the older static concepts through the discovery that these institutions are the evolutionary products of human experience in the efforts to satisfy human needs. It is no longer held in scientific circles that social institutions originated in a perfect state, as gifts from the gods, and that they represent today more or less decadent forms. On the contrary, the modern concept is that mankind has struggled upward from savagery to civilization by the slow process of the accumulation of experimental knowledge and that human institutions record in their development the successive, though diverse, achievements by which any group has arrived at its present state.

It is true of course that the method itself has undergone certain transformations. Largely under the influence of Herbert Spencer's broad concepts of universal evolution, early writers were prone to generalize from inadequate data and to form, too hastily, theories as to the rise and development of institutions. They sought for single origins and for a unitary process of growth through consecutive and logical stages. We now know that social phenomena

are not susceptible of such naïve analysis. But the method at the time performed a most useful service. It did the thing which most needed to be done. It fixed for all time in the domain of social thinking the natural-history process of interpretation by which we describe phenomena in terms of antecedents and consequents.

Later writers with larger funds of information and with improved techniques have described more specific processes discoverable in concrete situations and have shown that social institutions, while they may represent universal culture-patterns, as Professor Clark Wissler has claimed,¹ are conditioned locally by the incidents of time and place, of race and creed, of speech and *mores*, and many other factors, and they present a very great variety of effects under varying local conditions.

All this increases inevitably the difficulty of making generalizations. One must proceed cautiously and tentatively. Nevertheless there is much uniformity in culture traits however great the diversity may be in their manifestations. For example, some form of socially approved customs in regard to sex relations, the care of children, and family organization is found among all peoples although identical patterns are not found in any two groups. Nothing in modern scientific method, however, detracts one iota from the conclusion that there are no uncaused social events. Rather do we find the conviction deepened that social phenomena are invariably to be explained as the natural effects of an integrated set of factors adequate to produce them, although the discovery and analysis of such factors may constitute a challenge to our industry and to our ingenuity.

The Origin of Divorce

Divorce is a social phenomenon. It is the only other way, aside from death, by which the legal bond of marriage can be dissolved. Divorce, therefore, cannot be considered

¹ Cf. *Man and Culture*, pp. 73-74.

apart from marriage. Marriage as a social institution everywhere is surrounded by custom and law, by means of which the group expresses its approval of the method of entrance into the connubial relationship and of the newly created status of the persons concerned. In the event that this relationship is terminated prior to the death of one of the parties, as frequently is the case, then the habitual method of release acquires social approval also and the status of the free individuals must be redefined. This is divorce.

In seeking the origin of divorce, therefore, we must pursue the same methods employed in investigations relative to marriage. In the beginning of his monumental work, *The History of Matrimonial Institutions*, Professor Howard says: "Marriage is a product of social experience. Hence to understand its modern aspects, it is needful to appeal to the general sociological facts surrounding its origin and its early history among the races of mankind."¹ Only by treating the subject of divorce in the same way shall we be able to view its present aspects with intelligent comprehension.

The origin of marriage historically lies far back in the proto-human stage of social development and thus permanently eludes the most painstaking investigations of the anthropologist. Professor Edward Westermarck says: "As for the origin of the institution of marriage, I think that it has most probably developed out of a primeval habit. We have reason to believe that, even in primitive times, it was the habit for a man and a woman (or several women) to live together, to have sexual relations with one-another, and to rear their offspring in common, the man being the protector and supporter of his family and the woman being his helpmate and the nurse for their children. This habit was sanctioned by custom, and afterwards by law, and was thus transformed into a social institution."²

¹ Vol. I, p. 8.

² *A Short History of Marriage*, pp. 2-3.

Researches among the most primitive groups of pre-literate peoples reveal a wide variety of well-regulated marriage customs which display a relatively highly developed character in contrast with what we must imagine the most elementary usages to have been, and which indicate that such peoples already have advanced a considerable distance along the pathway of progress. From such information as we do possess there is every reason to believe, therefore, that the origin of marriage cannot be dated from any particular moment but that it represents a process of growth as the result of the human struggle to satisfy persistent needs that synchronizes with the entire range of social evolution.

While it is true that marriage has to do primarily with the regulation of human mating and of sexual behavior in general, and that enduring marriage is not essential to race perpetuation, there are interests which are associated with marriage, on however low a level of culture we view it, such, for example, as those connected with parenthood and economic necessity, which concern the nature of family organization. These interests affect the duration of marriage and around them developed social customs and *mores* which the group found it experimentally advantageous to enforce as a matter of social security and expediency. It is here, then, that we find the origin of those social regulations in regard to marriage with which primarily we are concerned, namely, the matter of durability.

On the lowest culture levels marriage is not regulated by concepts with which we are familiar and which we regard as appropriate. Thus Mr. Spencer pertinently remarks: "that the marital relations, like the political relations, have gradually evolved and that there did not exist at first those ideas and feelings which among civilized nations give to marriage its sanctity."¹

¹ *Principles of Sociology*, Vol. I, pp. 615-616.

Human marriage, under the most primitive conditions of which we have knowledge, and where other complicating interests are not imperious, often partakes of the transient nature characteristic of the mating habits of inferior creatures. Thus among both extant and extinct races we find evidences of every degree of the duration of marriage from the single act of coitus to the lifelong union. Often the relation is so temporary as scarcely to deserve the name of marriage. At the other extreme, however, are those instances, not infrequently encountered, in which not even death is thought to terminate the marriage and widows are immolated that they may accompany their husbands into the spirit world.

But trial and short-time marriages frequently do occur.¹ It was probably the shock of this discovery and the conflict of such ideas with traditional ones which overimpressed many early writers with the lack of durability in primitive marriage. Modern writers are quite cautious in expressing their views on this subject. As, for example, Westermarck: "Among a few uncivilized peoples marriage is said to be indissoluble or divorce unknown, and among many others divorce is said to be rare or marriage as a rule to last for life; but there are also many tribes in which divorce is reported to be of frequent occurrence or marriage of very short duration. Owing to the defective character of the information at our disposal it is impossible to say anything definite about the comparative prevalence of lifelong unions and of divorce among the lower races in general, or about the duration of marriage at the different grades of economic culture compared with one another. But the universal or almost universal prevalence of lifelong unions among some of the lowest hunters and incipient agriculturists . . . is certainly very striking."²

¹ Cf. WESTERMARCK, *The History of Human Marriage*, Vol. II, pp. 267-268. Also BARTON, GEORGE A., *A Sketch of Semitic Origins*, pp. 47-49.

² *Op. cit.*, p. 276.

Professor Wissler speaks in the same guarded manner: "A few primitive tribes look upon marriage as for life, but among others divorce is recognized. The procedure may be easy or difficult, varying according to custom. Our previous statement that the primitive community views marriage as a binding obligation, should not be construed to mean that marriage among primitive peoples is more stable than among Christian nations; on the contrary, divorce is often frequent, and abduction and elopement are far from rare. The reader of Spencer and Gillen's sketches of Australian life will recall how a man's wife would often be enticed away and how quickly the deserted husband would retaliate by stealing off with another man's wife. A good-looking young woman, unless married to a powerful man, would probably change husbands a number of times. In more advanced primitive groups, where the solidarity of the group is greater, more resistance will be offered. Some tribes provide drastic punishments for elopements and abductions; yet, even so, separations are frequent when judged by civilized standards. The important point, however, is that divorce is tolerated, and more or less controlled by the group almost everywhere. Among some 271 tribes noted by Hobbhouse, only four per cent regarded marriage as indissoluble, twenty-four per cent permitted separation for certain specified reasons, while seventy-two per cent left the contracting parties free to decide for themselves. On the other hand, gross injustice by one of the contracting parties, excessive cruelty, or depravity is certain to arouse the group and probably lead to retaliation, which demonstrates that, after all, the group does take cognizance of the termination of marriage."¹

Now it is in these same facts that we find the starting point of our investigation. Precisely in the same sense in which these temporary and transient relations of the sexes, characteristic of peoples of low levels of culture,

¹ *An Introduction to Social Anthropology*, p. 192.

constitute the beginnings of marriage, the subsequent and frequent termination of these marriages constitute the origin of divorce. From this beginning in loosely restricted group action, the history of marriage and divorce reveals the continuous though varied process by which they have passed, in civilized communities, under the most rigid regulation of the combined forces of social control.

Early Aspects

Mating, the counterpart of marriage among the lower animals, is unaccompanied by any form of ceremony and the termination of their temporary unions involves no formalities. It is likely that the same thing was true of our primal ancestors. Very early, it is logical to assume, group customs arose in regard to these recognized relationships and some form of publicity was required to distinguish them from illicit connections. It is here no doubt that the marriage ceremony took its rise. At any rate we find among primitive culture groups everywhere certain customs which symbolize the beginning of the marital relation, such as the act of joining hands in public, eating jointly some designated article of food, drinking simultaneously some prescribed beverage, sitting together by the camp fire, or performing unitedly some domestic task. These simple acts constitute the public announcement that the couple has entered voluntarily into the new relationship and in many instances they are required as giving marriage its validity. In those cases where some form of coercive marriage exists, or has existed formerly, the ceremony may simulate parental prearrangement, or the fiction of capture or purchase. In still other instances among savage tribes, a formal declaration of the chief is necessary in order that the marriage may be recognized as valid.

In connection with these primitive ceremonies there has developed that wide range of marriage rites, performed for many different purposes, which prevails in both

savage and civilized societies. They employ magic as a means of conveying benefits such as the promotion of health, happiness, fecundity, prosperity for the newly wedded pair. Many of these persist as survivals in modern society notwithstanding the fact that the conditions which gave rise to them have ceased to exist.

Now the undoing of marriage is accompanied by similar or corresponding customs. Professor Howard says: "Few of the results of recent research are more surprising than the revelation of the existence among low races of elaborate systems of unwritten law covering, often in a very orderly and comprehensive way, most of the divisions which one ordinarily associates with 'civilized' jurisprudence. This is especially true of the law of divorce. The investigations of various scholars, notably those of Kohler, Letourneau, Westermarck, and Post, have disclosed among the barbarous or even savage races of mankind a careful attention to detail, a stability, and often a respect for equity, in the customary rules relating to the dissolution of marriage, which Western prejudice is scarcely prepared to find."¹

Conditions of separation, and the rules and regulations concerned therewith, seem to have a definite correspondence with the nature of marriage. Where the group takes slight cognizance of marriage the parties are usually permitted to dissolve their unions largely at will and with little ceremony. Not infrequently the simple divorce procedure is merely a symbolic act which indicates the nature of the transaction, like the throwing out of clothes or other belongings, or the turning of the offending party out of doors. Sometimes it is a mere proclamation before witnesses. Among groups on a higher culture level where greater formality in regard to marriage and other social relations are to be found, conditions of separation become more restricted and more clearly defined, and begin to assume the nature of formal divorce. In this situation

¹ *History of Matrimonial Institutions*, Vol. I, pp. 224-225.

divorce may be settled in a council of relatives of the parties, or it may require a decision of the "elders," or chiefs, or some other magisterial or priestly authority. In such instances it may require something in the nature of a trial in which the causes for action are considered. Among the early Hebrews it took the unique form of a written "Bill of Divorcement" under socially prescribed conditions. It thus becomes something of a remedial measure for the readjustment of the social and legal status of those whose marriage relations have broken down.

It is interesting that we should find even among rude societies such specific, though conflicting, traditions in respect to the right of the individual to divorce. On this subject A. H. Post gives a most elaborate summary: "In respect to divorce, the existing rights among different peoples of the earth, vary within the widest conceivable limits. There are cases in which the marriage tie may be dissolved at any time at the pleasure of either of the parties, and there are cases in which the relations are absolutely indissoluble. Between these opposing extremes, are found all conceivable intermediate stages. Sometimes the man only has a one-sided right of divorce, and sometimes the woman only. Sometimes a marriage separation is admissible only upon specified grounds, and these grounds may be different for the woman than for the man, or they may be the same. The character of marriage among different peoples is the chief influence in shaping the form of divorce right. In a weakly developed family organization, or in one on the point of decay, marriage is on either hand easily dissoluble. Under the reign of rape and wife purchase, the right of the wife to divorce, is as a rule, very contracted, that of the husband is often very extensive. Under political organization, and under the family organized on the basis of parental rights, special grounds for divorce customarily develop, which, when the wife is the equal born life companion of the man, are commonly alike for both

parties, while, where they do not stand on an equal footing the grounds for divorce for each party are different. Thus:

"1. Sometimes marriage is such a loose relationship that it may be dissolved at any time at the discretion of either party.

"2. Sometimes marriage is absolutely indissoluble: only death can separate the married pair.

"3. Sometimes marriage can be dissolved only by the agreement of the parties, while there are no other reasons for the separation.

"4. Sometimes the husband has the right to divorce the wife at his pleasure, or if reasons are required, the most trivial ones are sufficient.

"5. Sometimes the wife has also the right to separate at her pleasure, or where reasons are required, they may be of a most trivial nature.

"6. That marriage can be dissolved only upon specified grounds is a widespread rule and indeed, while these grounds often differ for men and women, they are often the same."¹

The frequency of early divorce depends likewise upon the prevailing ideas and customs concerning marriage. Where marriage is a voluntary relation of indefinite duration, men and women sometimes marry and separate several times in the course of a lifetime. This condition is met with frequently in societies on a low level of culture, notwithstanding the fact that lifelong unions are found among some. Since an unmarried person in primitive society is an exception to the rule, the number of both marriages and divorces is high. Where marriage is a more permanent relation and its durability is fostered by the external pressure of social tradition, death comes to terminate proportionately more marriages and the number of divorces in proportion to marriages declines.

¹ *Entwicklungsgeschichte des Familienrechts*, pp. 249-255.

Where marriage is effected by capture or by purchase—conditions probably never so extensive as some early writers assumed, certainly not “stages” in the evolution of marriage—the stability of marriage is enhanced though at the sacrifice of other interests. The wife becomes the chattel of her husband-owner, and divorce ordinarily is his prerogative alone; she can exercise little choice. He may do with her largely as he pleases. He appears, however, to have been restrained from the unrestricted exercise of his power by certain external considerations. Economic reasons very early complicate matters. Especially in the case of purchase, there is always danger of blood feud with his wife’s tribesmen if his treatment is too brutal. In the absence of more refined restraints, his regard for his wife as a species of property may have a controlling influence. His interest in her ceases if he divorces her. He is furthermore likely to suffer the loss of the purchase money or the “presents” he gave for her, and he may be compelled to return any property she may have brought to him at the time of her acquisition. Under other conditions where the wife brings her marriage portion or dower, divorce is attended by still greater loss. Unless divorce is for grave reasons the husband may be required to restore the dower and often to turn over all or part of his property. He may suffer also the loss of his children. Where the wife is accorded the privilege of divorcing her husband, unless it is for serious offenses on his part, she often forfeits her dower and sometimes her children. Difficulties of self-support and other disabilities of sex, usually have made divorce on the part of the wife more difficult and have compelled her to endure much rather than to leave her husband.

As to the causes for which divorces are allowed among preliterate peoples, while usually less specifically defined, they are approximately those recognized in later civilizations. Wherever group sanction is required for valid

divorce a "just cause" must exist, although what constitutes a just cause may reveal a wide variety of customary attitudes. Adultery as a cause on the part of the wife almost universally is approved, and frequently is for the husband. Barrenness or impotency, because of the emphasis on the desirability of children, is frequently a cause either for divorce or for plural marriage. Many other causes, among which there appear some of the most trivial character, are cited as having wide distribution and approval among various peoples.

The Form of Marriage and Its Effect on Divorce

In addition to the foregoing observations it is desirable now to consider what bearing the diverse forms of marriage in primitive society have upon the right and frequency of divorce. That the form of marriage always has been that with which we are familiar today in modern civilization is held only by those who are totally unfamiliar with the history of the institution.

Man has a peculiar facility for adapting his social institutions to his needs through the means of the trial-and-success method of experimentation, or by culture borrowing. It is probable therefore that the known forms of marriage are special regional developments out of the "primordial habit" of mating.

Three typical forms have existed over wide areas and among many peoples, and still persist. They are monogamy or the single pairing form—the marriage of one man and one woman, and the two forms of polygamy or plural marriage, namely, polyandry—the marriage of one woman to more than one man simultaneously, and polygyny—the marriage of one man to more than one woman. Other forms of group marriage have existed but they are more or less sporadic and usually have been modifications of the forms of polygamy and hardly have constituted distinct types.

It is impossible in the present state of our knowledge to assign with confidence any priority of origin to any one of these forms or to assert that there has been any unitary or linear process of development by which one form is transmuted into another, as formerly was assumed by some writers.

It appears that the single pairing form has been more extensive than any other since it has existed from earliest times and is the only form which is found among all peoples. The earlier monogamy was tolerant of other forms and flourished side by side with them. It has been noted that where polygamy in some form has group approval and is practiced, many of the people, sometimes the vast majority, have lived in the monogamous relation. Monogamy is consistent with the usual numerical equality of the sexes, fosters the interests of property and social solidarity, is most conducive to the welfare of children, and is favored by "the healthiest moral sentiment." It has survived all other forms and has become in Western civilization the only socially approved type. Other forms persist in society today only as clandestine and illegal relations.

Polyandry is not as extensive as other forms, so far as we may judge from available knowledge; at least it is not so widespread among extant backward groups. It springs in the main, according to those best informed on the subject, from the numerical disparity of the sexes—the scarcity of women being characteristic of practically all regions where polyandry is found. Again it has been traced to economic necessity. It almost invariably has been associated with sparse populations situated in unfavorable habitats where the struggle for existence is severe and under conditions such that the family is more likely to survive if there are several men to support it. Westermarck says: "It is obvious that poverty and paucity of women easily may be a com-

bined cause for polyandry,"¹ but after discussing the difficulties involved in arriving at a complete understanding of the causes of polyandry, and after pointing out that it is not to be found in many regions where males greatly outnumber females and where because of poverty or other reasons it might be useful, he concludes: "But, generally speaking, there can be little doubt that the main reason why polyandry is not more commonly practised is the natural desire in most men to be in exclusive possession of their wives."²

Polygyny has been practiced very extensively, having been found to exist in nearly all preliterate societies and in many early civilizations. Certain writers have emphasized this fact. Hobhouse remarks that "the permission of polygamy [polygyny] is the rule throughout the uncivilized world, its practice extending with industrial development but reaching a maximum in the pastoral state."³ Professor Wissler also declares that "the majority of [primitive] peoples appear to take polygyny as their ideal."⁴ It is usually associated with conditions where economic advantages accrue to the man who possesses a plurality of wives on account of their labor value. Or, it is regarded as an index of class distinction as exhibiting a man's wealth or eminence, or his valor in acquiring female trophies in military exploits. Even where it is not common among the people generally, or where it may be a disappearing custom, it may persist as a prerogative of chiefs and nobles as a sign of rank.

Two other types of tribal social customs which affect the problem of early divorce must be considered, namely, residence and descent. We quote Professor F. H. Hankins' very clear and compact description of these phenomena.

¹ *Op. cit.*, p. 260.

² *Ibid.*, p. 264.

³ HOBHOUSE, WHEELER, and GINBERG, *The Material Culture and Social Institutions of the Simpler Peoples*, quoted by WISSLER, *An Introduction to Social Anthropology*, p. 186.

⁴ *Ibid.*, p. 187.

He says: "The place of residence of husband and wife must be taken into account in considering the forms of marriage and the family. There are three possibilities. The young couple may live in the household of the parents of either the bride or the bridegroom, or they may set up a separate establishment. If the bride remains in her own household, residence is said to be *matrilocal*. If the husband takes her to his parental domicile, it is *patrilocal*. There are thus a great variety of possibilities, and all of them seem to be in vogue here or there. The polygynous husband may bring his wives to his paternal house; they may remain each in her mother's house; he may establish an independent household for them; or he may maintain a separate house for each. Polyandry shows somewhat similar variations,

• • •
"Of like importance is the method of tracing descent. When this is traced through the mother, it is called *matrilineal*; when through the father, *patrilineal*. The former is also referred to as *mother-right*, and the latter as *father-right*.

"It is generally true that matrilineal descent and matrilocal residence are found together, as are also patrilineal descent and patrilocal residence. There are, however, numerous cases of matrilocal residence accompanied by patrilineal descent."¹

Still another archaic type of organization, originating in tribal society, which has survived even into modern civilization, and which has a direct and powerful influence upon the right of divorce, is concerned with the matter of family domination. Notwithstanding the important position which women attained in polyandry and as a result of matrilineal descent and matrilocal residence, often coupled with the inheritance and control of property and with a large influence in domestic and political affairs, there seems to be a pretty general consensus of belief

¹ *Introduction to the Study of Society*, p. 613.

among anthropologists that there probably never has existed a true *matriarchate*—a condition of female rulership.

It is quite otherwise in regard to men. Because of a variety of reasons connected with superior physical strength and vigor, and being unfettered by child-bearing and infant care, man has been absorbed in warfare, in industry, in the accumulation of property, in the protection and support of the family, and, unless otherwise inhibited, has come to dominate the domestic and political situation. Out of these considerations the organization of marriage and the family known as the patriarchal, seems naturally to have evolved. The extent of this male domination in early societies led Sir Henry Main in his *Ancient Law* to regard it as "the primeval condition of the human race"—a very exaggerated appraisal—and to develop on this basis his "Patriarchal Theory" of social origins.¹ The patriarchal type of the family, however, reached its highest development in the early civilizations of the Babylonians, Hebrews, Greeks, and Romans and was transmitted as a heritage to Western civilization. In the Roman family where it is said to have attained its most absolute form, the rule of the patriarch or *pater familias* was most despotic. His will was law. He was "king and priest of the household" and he exercised the power even of life and death over the members of his family.

What, now, has been the influence of these forms upon divorce?

It seems clear that in the case of monogamy, tendencies have been in the direction of the equalization of privileges. Monogamy is essentially individualistic. Where marriage is voluntary and where its duration depends upon preference and not upon coercion of any sort, divorce ordinarily may be obtained by either party or by mutual consent. For individual or social reasons monogamy often has been the prevailing type even where plural forms have been ap-

¹ See Howard's statement and criticism of this theory, *op. cit.*, Vol. I, Chap. I.

proved or the exclusive type where plural marriages formerly may have existed or where conditions favored them. Under such circumstances the notions in respect to the right of divorce may be biased by these influences and may range all the way from the unlimited freedom of both parties to the exclusive right of either the husband or the wife. On the whole the advantage has been on the side of the man, and various factors have operated to maintain this advantage, but the struggle of women to become free and equal members of the monogamic partnership is marked from the beginning and in modern times promises to become wholly successful.

Polyandry and polygyny combined with other marital customs naturally introduced restrictions on the part of husbands and wives in respect to the right of divorce. Matrilocal residence subjected husbands to the domination of the wife's clan into which he was required to merge most of his interests. The matrilineal method of tracing descent, involving the transmission of totemic names and the inheritance of property in the female line, placed the balance of power in the hands of women. Polyandry placed a premium upon women because of their scarcity and thereby made their position in the family strategic. All these factors combined to place women at an advantage and thus to increase their power to dictate within the marriage relation. Divorce was largely under these influences a female prerogative.

Precisely the reverse effects were the result of patrilocal residence, patrilineal descent, and polygyny. Professor Howard says: "Gynocracy and with it polyandry, which is its result, is the highest stage in the evolution of hetairistic mother-right; just as polygyny and the patriarchal family are the highest stage in the evolution of the father-right or the agnatic system of kinship,"¹ and Professor William Graham Sumner states:

¹ *Ibid.*, Vol. I., pp. 57-58.

"In the mother-family, the woman could dismiss her husband. This she could do in all the transition forms in which the husband went to live with the wife at her childhood home. In the father-family, the wife, obtained by capture or purchase, belonged to her husband on the analogy of property. The husband could reject or throw away the property if he saw fit. It is clear that the physical facts attendant on the two customs—one that the man went to live with his wife, the other that he took her to his home—made a great difference in the status of the woman. In the latter case she fell into dependence and subjection to the dominion of her husband. She could not divorce him."¹

The inference is clear, from these observations, that in polyandry and its associated customs and forms, the right to divorce rested chiefly with the wife, while similarly, with respect to polygyny, it was as certainly the dominant right of the husband. This probably would be the case, even where these forms had given place to the single pairing type, but where old customs persisted. Where either the man or the woman would not or could not avail themselves of the privilege of a plural household, they would nevertheless be bound by existing customs regulating their unions.

Under the sway of masculine suzerainty in the patriarchal organization of the family, the right of the husband has been all but supreme. Only where this control has been restricted or modified by impinging conditions of environment or culture changes have the rights of wives received any considerable degree of consideration.

¹ *Folkways*, pp. 377-378.

CHAPTER THREE

DIVORCE IN ANCIENT LAW CODES

FROM EARLIEST TIMES AND AMONG ALL PEOPLES, AS WE HAVE seen, marriage and divorce have been human experiences around which group habits or folkways have accumulated. These have grown into publicly approved customs which have been handed down as social traditions and have in turn become imbedded in civil law. Thus we find in the early law codes of ancient civilizations many of the customs of preliterate peoples preserved either in similar or in modified forms.

In a few of the lower, and in most of the higher, levels of civilization the ideal of marriage is that of a lifelong union of husband and wife. For many reasons this ideal has never wholly been realized in actual experience. The relations entered into at marriage frequently cease. In order to redefine the status of the separated parties, to provide for offspring, and to determine the rights of property, societies have been under the necessity of developing experimentally habitual procedures and of enacting them into rules and regulations. This has been the chief function of law in regard to divorce. Ancient law is far more the codification of emergent behavior uniformities than it is a means of imposing upon the group the arbitrary dictates either of an individual or of a collective will.

A cursory review of the divorce procedures of a few of the ancient codes will be instructive. It will disclose the attitude of ancient historic societies in regard to the subject and their methods of dealing with it. Our chief object in presenting this survey of ancient legislation, aside from its historical value, is to strengthen the position already

taken in reference to the secular nature of marriage and divorce. If in any instances regulations are modified by religious influences, it is in the same sense that economic and other social institutions generally are so modified. In the digest of the codes herewith presented we shall see how competent societies have felt themselves to be to deal with the matter.

This survey is not intended to be exhaustive. The few codes chosen for study are perhaps the most widely known and are among those most closely associated historically with the development of Western civilization.

The Code of Hammurabi

Babylonia was one of the earliest civilizations of recorded history. Many inscriptions date as far back as 4000 B.C. The ancient Code of Hammurabi, King of Babylon, about 2300 to 2250 B.C. was discovered by M. de Morgan at Susa in 1901, and is probably the oldest law code in existence. It shows how, at this early date, the subject of marriage and divorce already had become matters of regulation by the state. From this code we learn that the family organization, as was the case in practically all early civilizations, was patriarchal. Marriage, it appears, was a modified form of purchase, arranged with little respect for the wishes of the bride. It consisted in the exchange of gifts, a form found among many primitive races, in which presents were made both to the bride and to her father and in turn the father settled a dowry upon his daughter.

Similar "commercial transactions" appeared in respect to divorce. While the husband could divorce his wife at will without assigning cause, a wife and even a concubine had certain pecuniary guarantees against arbitrary dismissal. Thus: "If a man set his face to put away a concubine who has borne him children, or a wife who has presented him with children, he shall return to that woman her

dowry and shall give to her the income of field, garden, and goods and she shall bring up her children . . . and the man of her choice may marry her."¹

The presence or absence of certain stipulated causes such as barrenness, disloyalty, neglect, or disease determines the status of the divorced wife, settles the question of compensation, and, if required, fixes the amount.

"If a man would put away his wife who has not borne him children, he shall give her money to the amount of her marriage settlement, and he shall make good to her the dowry which she brought from her father's house and then he may put her away."² . . . "If there were no marriage settlement, he shall give to her one mana of silver for a divorce."³ . . . "If he be a freeman, he shall give her one-third mana of silver."⁴ . . . "If the wife of a man who is living in his house, set her face to go out and play the part of a fool, neglect her house, belittle her husband, they shall call her to account; if her husband say, 'I have put her away,' he shall let her go. On her departure nothing shall be given to her for her divorce. If her husband say: 'I have not put her away,' her husband may take another woman. The first woman shall dwell in the house of her husband as a maid servant."⁵ . . . "If a man take a wife and she becomes afflicted with disease and if he set his face to take another, he may. His wife who is afflicted with disease, he shall not put away. She shall remain in the house which he has built and he shall maintain her as long as she lives."⁶ . . . "If that woman do not elect to remain in her husband's house, he shall make good to her the dowry which she brought from her father's house and she may go."⁷

¹ *The Code of Hammurabi*, translated by HARPER, W. R., Sec. 137.

² *Ibid.*, Sec. 138.

³ *Ibid.*, Sec. 139.

⁴ *Ibid.*, Sec. 140.

⁵ *Ibid.*, Sec. 141.

⁶ *Ibid.*, Sec. 148.

⁷ *Ibid.*, Sec. 149.

Adultery on the part of the wife does not seem to be a cause for divorce but is subject to severer penalty. "If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water."¹ This treatment is carried out unless the king pardons his "servant" or the "owner" his wife.

The wife does not "put away" her husband but she has the equivalent right of leaving him for sufficient reasons and of demanding that he divorce her with the return of her dowry. In such cases, however, the husband is protected against blackmail by the requirement that the wife must be of good character: "If a woman hate her husband, and say: 'Thou shalt not have me,' they shall inquire into her antecedents for her defects; and if she have been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and shall go to her father's house"² . . . If she have not been a careful mistress, have gadded about, have neglected her house and have belittled her husband, they shall throw that woman into the water.³

As to the probable frequency of divorce Professor George A. Barton says: "Among the Babylonians the frequency of divorce is not so easy to trace . . . Nevertheless, in the few marriage contracts and records of Babylonian divorce which have been studied, a sufficient number of instances appear to make it clear that divorce was not uncommon . . . The fact too, that provisions for divorce were usually introduced into the marriage contracts of those women who married without a dowry, is clear proof that divorce was so common in Babylonia that women were compelled to protect themselves against it in the marriage contract. Where the woman carried to the husband a

¹ *Ibid.*, Sec. 129.

² *Ibid.*, Sec. 142.

³ *Ibid.*, Sec. 143.

dower, this was not necessary, since in Babylonian law the dowry was always hers, so that in case the husband divorced her he would lose it. In such cases the self interest of the husband was thought to be a sufficient protection to the wife."¹

The Laws of Manu

It has been claimed that the early Eastern civilization of the Hindus bears a closer resemblance to Western civilization than many others because of the influence of Aryan culture. However this may be, we find that the Indian family life at the dawn of the historic era was typically patriarchal. In the heroic age of the Vedas the father was master and owner of his entire household.² The Laws of Manu is an ancient compilation of institutional ordinances attributed to the legendary Hindu lawgiver of uncertain date. The code in its present form is regarded by the best authorities to have been assembled about the beginning of the Christian era. It contains many regulations in regard to marriage and divorce which doubtless had their origins in ancient usages.

Women at all times are under the complete tutelage of men. Their subserviency is absolute and their right to divorce specifically is denied, and no redress for wrongs is provided by that method:

"In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent."³

"She must not seek to separate herself from her father, husband, or sons; by leaving them she would make both (her own and her husband's) families contemptible."⁴
"She must always be cheerful, clever in (the management of

¹ *A Sketch of Semitic Origins*, pp. 45-46.

² Cf. HOBHOUSE, L. T., *Morals in Evolution*, pp. 190-196.

³ MÜLLER, F. M., *Sacred Books of the East*, Vol. XXV, translated by BÜHLER, GEORGE, Chap. V., No. 148.

⁴ *Ibid.*, Chap. V, No. 149,

her) household affairs, careful in cleaning her utensils, and economical in expenditure.”¹ “Him to whom her father may give her, or her brother with the father’s permission, she shall obey as long as he lives, and when he is dead, she must not insult (his memory).”²

“She who shows disrespect to (a husband) who is addicted to (some evil) passion, is a drunkard, or diseased, shall be deserted for three months (and be) deprived of her ornaments and furniture.”³

By surrounding marriage with religious sanctions the Brahman law sought to improve its status. First, by doing away with forcible abduction and especially with marriage by purchase which formerly had been extensive. “No father who knows the law must take even the smallest gratuity for his daughter,” and he that does so is a “seller of his offspring.” Nevertheless marriage by purchase was not eliminated, but ultimately it took the form of a marriage gift from the husband which was settled on the wife and became her dowry, and which passed to her family at her death.⁴ Second, although the wife remained under the complete domination of her husband an effort was made to soften her lot by religious appeal.

“Women must be honored and adorned by their fathers, brothers, husbands and brothers-in-law, who desire (their own) welfare.”⁵ “Where women are honored, there the gods are pleased; but where they are not honored, no sacred rite yields reward.”⁶

“Let mutual fidelity continue until death; this may be considered as the summary of the highest law for husband and wife.”⁷

¹ *Ibid.*, Chap. V, No. 150.

² *Ibid.*, Chap. V, No. 151.

³ *Ibid.*, Chap. V, No. 78.

⁴ Cf. HOBHOUSE, *op. cit.*, p. 192.

⁵ MÜLLER, *op. cit.*, Chap. III, No. 55.

⁶ *Ibid.*, Chap. III, No. 56.

⁷ *Ibid.*, Chap. IX, No. 104.

"The husband receives his wife from the gods, (he does not wed her) according to his own will; doing what is agreeable to the gods, he must always support her (while she is) faithful."¹

According to most interpreters marriage under the Laws of Manu was a kind of religious sacrament which never wholly could be dissolved. Even where the marriage was annulled or where the wife was "superseded" it does not seem to have implied more than divorce *a mensa et thoro*. "Neither by sale nor by repudiation is a wife released from her husband; such we know the law to be, which the *Lord of Creatures* (Pragapati) made of old."² It appears that remarriage for the wife never was allowed whereas the husband exercised that privilege.

The husband was accorded the right to annul a marriage for certain reasons and to abandon his wife: "Though (a man) may have accepted a damsel in due form, he may abandon (her if she be) blemished, diseased, or deflowered, and (if she have been) given with fraud."³ There were other conditions on which, however, he might either desert or supersede her:

"For one year let a husband bear with a wife who hates him; but after (the lapse of) a year let him deprive her of her property and cease to cohabit with her"⁴ . . . "She who drinks spirituous liquor, is of bad conduct, rebellious, diseased, mischievous, or wasteful, may at any time be superseded (by another wife)"⁵ . . . "A barren wife may be superseded in the eighth year, she whose children (all) die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay."⁶

¹ *Ibid.*, Chap. IX, No. 95.

² *Ibid.*, Chap. IX, No. 46.

³ *Ibid.*, Chap. IX, No. 72.

⁴ *Ibid.*, Chap. IX, No. 77.

⁵ *Ibid.*, Chap. IX, No. 80.

⁶ *Ibid.*, Chap. IX, No. 81.

In still other instances the right of the husband is restricted in the use of his ordinary prerogatives:

"But she who shows aversion to a mad or outcast (husband), a eunuch, one destitute of manly strength, or one afflicted with such diseases as punish crimes, shall neither be cast off nor be deprived of her property."¹

"But a sick wife who is kind (to her husband) and virtuous in her conduct, may be superseded (only) with her own consent and must never be disgraced."²

It appears, therefore, that while the patriarchal power of the husband was almost absolute, there was growing up at the time this law was promulgated a certain amount of limitation in the wife's favor, and while it did not offer her the privilege of divorce it did afford her a definite degree of protection. Although the husband's right to take as many wives as he chose seems scarcely to have been restricted, he could not, with impunity, dismiss existing wives except on the grounds of the defects enumerated.

The Mosaic Law

No more important law code for the student of comparative social institutions can be found than that contained in the Hebrew Scriptures and in other documents of rabbinical literature. The Jewish Law is embodied in the Pentateuch, or the Torah, which tradition assigned to Moses as he received it from Jehovah at Mt. Sinai. It is known as the Written Law. Accompanying this are the commentaries upon the written law by a succession of learned rabbis and judges. These are compiled in the Mishna and later embodied in the Talmud. Professor David Amram says: "The study of the laws of the Bible without the use of the Talmud is the study of the law without the commentary; it is an attempt to understand the character of a nation by reading its statute book, and disregarding

¹ *Ibid.*, Chap. IX, No. 79.

² *Ibid.*, Chap. IX, No. 82.

the judicial interpretation and application of its laws to the daily life of the people."¹

The origin of Semitic family life is shrouded in the mists of antiquity, but there are traces in the Old Testament of the prior existence of matrilineal descent and of mother-right. It is probable that the primitive culture of the Hebrew nomadic tribes was modified and enriched by Chaldean, Egyptian, and other early and more advanced civilizations with which they came in contact in the course of their wanderings. At any rate, by the time they emerged in history they had arrived at a fully developed patriarchal family system similar to that which we found among the Babylonians and Aryan Hindus. By virtue of his rank the husband and father was the supreme lawgiver and judge over his wife, his concubines and slaves, and his children.

Marriages were arranged with the bride's father or nearest male kinsman by a form of purchase-contract which involved a dowry, or by the rendering of service in the case of impecunious suitors.² Although the authority of the father was never abrogated, it appears that the wishes of daughters were not always entirely ignored. At marriage the bride passed out of her father's family and became the chattel of her husband. Divorce was an orderly and rigidly prescribed procedure, the voluntary prerogative of the husband only, involving in every instance the writing of a "Bill of Divorcement," called the *get*—a unique institution among the Hebrews. Even at a later time when the wife acquired the right to sue for divorce it still had to take the form of requiring her husband to write her the *get* and to free her from the marriage. She never could divorce him.

The position of authority accorded the head of the household in patriarchal society generally, was strengthened among the Hebrews by the theological tradition concerning

¹ *The Jewish Law of Divorce*, p. 20.

² *Genesis* 29: 16-30.

the creation of man and by the method of the introduction of evil: "And the man said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh."¹

As a penalty for her importunity, Eve is assigned to an inferior and dependent position: "Unto the woman he said, I will greatly multiply thy pain and thy conception; in pain thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee."²

Upon the ground of this priority, absolute authority in the matter of divorce rested originally entirely within the right of the husband, and this right, so far as legal theory was concerned, remained throughout the subsequent Jewish history, although in practice, under rabbinical interpretation, as we shall see, it was modified greatly. He was not even required, at first, to assign the cause upon which his action was based; it was quite a private matter:

"When a man taketh a wife, and marrieth her, then it shall be, if she find no favor in his eyes, because he hath found some unseemly thing in her, that he shall write her a bill of divorcement, and give it in her hand, and send her out of his house. And when she is departed out of his house, she may go and be another man's wife."³

It would seem that the husband was the sole judge of what was "unseemly," although throughout the period of the Mishnah it occasioned a sharp dispute between the schools of Shammai and Hillel over the construction put upon the term—the school of Shammai holding to the view that "something unseemly" alluded only to sexual immorality, while that of Hillel contended that it meant "anything offensive to the husband."⁴ In any event the

¹ *Genesis* 2: 23-24.

² *Ibid.*, 3: 16.

³ *Deuteronomy* 24: 1-2.

⁴ Cf. AMRAM, *op. cit.*, pp. 32-33.

divorce was absolute and afforded the wife the privilege of remarriage. Josephus commenting upon the matter says:

"He that desires to be divorced from his wife, for any cause whatsoever; and many such causes happen among men, let him in writing give assurance that he will never use her as his wife any more; for by this means she may be at liberty to marry another husband; although before this bill of divorce be given, she is not to be permitted to do so."¹

Josephus further cites two instances in which the sole right of the husband to divorce his wife was infringed. This was due, quite obviously, to the influence of Roman customs, prevalent at the time, which permitted women the free right to divorce their husbands.

The first instance is the case of Herodias, who "took upon her to confound the laws of our country, and divorced herself from her husband, while he was alive, and was married to Herod her husband's brother."² The second case was that of Salome, the daughter of Herodias, who after quarreling with Costoborus, her husband, "sent him a bill of divorce, and dissolved her marriage with him. Though this was not according to Jewish laws: for with us it is lawful for a husband to do so; but a wife, if she depart from her husband, cannot of herself be married to another, unless her former husband put her away. However, Salome chose to follow not the law of her country, but the law of her authority; and so renounced her wedlock."³

We observe, furthermore, that the absolute patriarchal right of the husband in matters of marriage and divorce was undergoing a process of abridgement at an early date. There were two definite limitations prescribed in the Torah, both based upon the misconduct of the man. The first was in the case of the newly wedded husband's false accusation

¹ *Antiquities of the Jews*, Book IV, Chap. VIII.

² *Ibid.*, Book XVIII, Chap. V.

³ *Ibid.*, Book XV, Chap. VII.

against the bride of antenuptial incontinence. In case of proof that his charge was slanderous: "The elders of that city shall take that man and chastize him; and they shall fine him a hundred *shekels* of silver, and give them unto the father of the damsel because he hath brought up an evil name upon a virgin of Israel; and she shall be his wife; he may not put her away all his days."¹ The second instance, was in case of rape: "If a man find a damsel that is a virgin, that is not betrothed, and lay hold on her, and lie with her, and they be found; then the man that lay with her, shall give unto the damsel's father fifty *shekels* of silver, and she shall be his wife, because he hath humbled her; he may not put her away all his days."² A modification of this latter provision appears in another place to the effect that if the father refuses to give his daughter to the ravisher, then the guilty man "shall pay money according to the dower of virgins."³

To these two limitations provided in the Written Law, the Oral Law added three others, namely, in case the wife had become insane, during any period in which the wife might be in captivity, and if she were too young to understand the nature of her *get*.⁴

In addition to these legal limitations was the existence of the law requiring the husband to return the wife's dowry in case he "put her away" which acted constantly as a restraining influence.

According to Philo, an interpretation by judicial decision had been placed upon the statutory requirement that the man who had falsely accused the bride of antenuptial incontinence had no option in regard to marrying her and without the right to divorce her, to the effect that the bride might not be compelled to live with the man whose conduct had been extremely odious to her, and that she

¹ *Deuteronomy* 22: 18-19.

² *Ibid.*, 22: 28-29.

³ *Exodus* 22: 16-17.

⁴ Cf. AMRAM, *op. cit.*, pp. 45-46.

might exercise her discretion in the matter of leaving him and of requiring him to divorce her.¹

While the theory of the law which gave exclusive right to the husband to divorce his wife, and in which she enjoyed no reciprocal privileges never was abrogated, it was modified for practical purposes in the Talmud by the assumption that the wife, for adequate reasons, might sue for divorce by the indirect method of requiring her husband to write her a Bill of Divorce and to set her free.

The basis for this interpretation was found in the Torah: "And if a man sell his daughter to be a maid-servant, she shall not go out as the men-servants do. If she please not her master, who hath espoused her to himself, then shall he let her be redeemed: to sell her unto a foreign people he shall have no power, seeing he hath dealt deceitfully with her. And if he espouse her unto his son, he shall deal with her after the manner of daughters. If he take him another *wife*, her food, her raiment, and her duty of marriage, shall he not diminish. And if he do not these three unto her, then shall she go out for nothing, without money."² The assumption here is that there was some lawful authority to which she might appeal in justification of her rights.

This principle of protection of the rights of women once established, it readily became expanded by rabbinical authority and the Mishna inscribes numerous grounds upon which wives could demand *gets* from their husbands, among which are: refusal of conjugal rights, impotence, loathesome disease, malodorous occupation, refusal to support, desertion, apostasy, licentiousness.³

The very striking resemblances between the Jewish divorce law and the Code of Hammurabi will have been noted. There are two probable explanations of these

¹ Cf. PHILO, *Of Special Laws Relating to Adultery*, etc., as cited by AMRAM, *ibid.*, pp. 41-42.

² Exodus 21: 7-11.

³ Cf. AMRAM, *op. cit.*, pp. 63-77.

parallelisms. Either the two peoples, though widely separated in time and territory, nevertheless passed through similar processes of development, or the Jews were influenced greatly by historic knowledge of the Babylonians. Most scholars are inclined to the latter opinion.

The Teachings of Jesus

Although not constituting in any sense a legal code, the teachings of Jesus have been so fundamental in shaping the ideas and ideals of the Christian Church throughout its entire history and in its relation to the development of Western civilization that we feel justified in including a study of them in this survey.

Marriage, as Jesus viewed it with remarkable historical insight, finds its origin neither in the sanctions of religion nor in civil law, but in the basic fact of sex, which constitutes it an organic rather than a formal union. Thus it is a relation founded upon the basis of natural law. Furthermore it should be remembered that in his day neither the State nor the Jewish Church had as yet arrived at the concept of marriage as a legalized institution, and it was his belief that man should not interfere, either in his legal or in his ecclesiastical capacity, to dissolve this natural relationship which theoretically consisted in a complete merger of personalities. Hence his statement:

"Hath ye not read, that he who made them from the beginning made them male and female, and said, For this cause shall a man leave his father and mother, and shall cleave to his wife; and the two shall become one flesh? So that they are no more two, but one flesh. What therefore God hath joined together, let not man put asunder."¹

Jesus' attitude toward divorce, however, seems to have been influenced profoundly by the conditions of the social life of his age. Powerful influences were making for the disintegration of the family. Jewish divorce scandals were

¹ *Matthew* 19: 4-6.

agitating the minds of the people. The Doctors of the Law were divided in their opinions on legal interpretation. John the Baptist had been beheaded for speaking his mind freely on the subject. "For Herod had laid hold on John, and bound him, and put him in prison for the sake of Herodias, his brother Philip's wife. For John said unto him, It is not lawful for thee to have her . . . and he sent and beheaded John in the prison."¹ Moreover in Rome the tide of domestic disorder was beyond the control of the law. Against this gloomy and forbidding background of chaotic family life Jesus, as a moral reformer, cast up the alluring picture of the ideal family. Marriage he had defined as a relation creating a physical unity and therefore indissoluble: "Whosoever shall put away his wife, and marry another, committeth adultery against her: and if she herself shall put away her husband, and marry another, she committeth adultery."²

In the two parallel passages from *Matthew*³ there is a qualifying clause "except for fornication," but since this exception is not found in *Mark* and *Luke* nor in St. Paul's reference to Jesus' teachings on the subject of divorce,⁴ and still further because any exception is inconsistent with the former statement, "What therefore God hath joined together let not man put asunder," many Scriptural exegetes believe that this exception was an interpolation inserted by compilers of the *Matthew* text.⁵ At any rate, the Pharisees who were interrogating him, construed his statement as an assertion of the indissolubility of marriage for any cause and challenged his inconsistency with the law of Moses by the query: "Why then did Moses command to give a bill of divorcement, and to put her away?"⁶ In defense he

¹ *Matthew* 14: 3-10.

² *Mark* 10: 11-12.

³ *Matthew* 5: 32 and 19: 9.

⁴ *Cf. I Corinthians* 7: 10-11.

⁵ *Cf. DE POMERAI, RALPH, Marriage*, Chap. XI, pp. 183 ff. for the other view.

⁶ *Matthew* 19: 7.

was ready with the reply: "Moses for your hardness of heart suffered you to put away your wives: but from the beginning it hath not been so."¹ This latter remark probably was not intended as a historic allusion but as a statement of the principle to which he adhered.

It has been asserted on the theory that he made the exception in the case of adultery, that in his teaching on divorce Jesus did not advance beyond the Jewish theory that divorce was the sole right of the husband, and that this probably was due to the fact that his utterances on this subject were in answer to the question, which it would have occurred to no one to put the other way: "Is it right for a *man* to put away his wife for every cause?" This assertion overlooks the fact that in his statement as recorded by Mark he assumes that either the husband or the wife may divorce the other, and thereby places them upon an equal footing while he condemned the action of both. This, however, may have been nothing more than an allusion to the practices allowed by Rabbinical interpretation or to the current Roman customs.

The issue of the conflict which has been waged throughout the centuries over the interpretation and application of these recorded teachings of Jesus on the subject of divorce has been one of literalism versus liberalism—a controversy similar in kind to that which we found among the Jews concerning the strict construction of the divorce laws of the Torah or Written Law. The issue there was settled, as we observed, not by formal decision but by the progressive adaptation of the law through judicial interpretation to the needs of a growing civilization.

The question here is, are we warranted in assuming that Jesus intended his teachings on divorce to constitute another Law, abrogating the edicts of his own people in the Torah and in the Talmud on the subject, and constituting an unalterable code for Church and State for all future

¹ *Matthew* 19: 8.

time? Or, should we assume that he enunciated ideal principles like those of the Sermon on the Mount and the Golden Rule to be worked out in harmony with human experience in the moral struggle of mankind for the actualization of the Kingdom of God on earth?

In response to the question whether the teachings of Jesus constitute an absolute maxim of Christian morals from which there can be no possible deviation, Rev. Newman Smyth says:

"Our answer will depend very much on two considerations. The first will be our general habit of reading the New Testament as another law, or of interpreting its precepts to the best of our understanding in what we may judge to have been the spirit in which they were spoken, remembering the Master's own saying that his words are spirit and they are life. The other consideration will be our confidence in the correctness of the premise that the special sin alleged, by which the marriage union has been violated, is the full moral equivalent of adultery."¹

Summarizing a wide range of views it seems possible to reduce them to three fairly typical attitudes:

First, that Jesus evidently intended his declarations on divorce to be accepted and applied literally, and without modification on the basis of his divine authority both in the doctrines and discipline of the Church and in civil legislation as the "secular arm" of the Church in so far as the Church has power to secure that result.

This is substantially the position taken by the Roman Catholic Church and in much of the ecclesiastical legislation of Protestant Churches as revealed in our survey in Chapter IX.

Second, that the State has its own separate and legitimate sphere of secular control, and since its primary function is the preservation of the public order and the promotion of the temporal well-being of its citizens it is proper to

¹ *Christian Ethics*, pp. 413-414.

concede to it the right to declare marriage a civil contract and to grant divorces upon such grounds as it may decree in what it may regard as the best and most enlightened interests of society.

This represents the view of those who hold that the Church functions predominantly, if not exclusively, in the domain of spiritual matters and exercises its control alone over its adherents.

Third, that Jesus did not commit himself to any definite political or ecclesiastical policy and that he did not intend, in expressing his views on divorce, any more than he did upon any other subject of economic, political, or social importance, to legislate either for the Church or for the State, but that he enunciated great ethical principles as standards of both individual and social behavior, here as in every other domain of human interest. From this it follows that, while the duty of religious leaders is clear in the matter of upholding high ideals in regard to marriage and the family as among the most important concerns of life, the Church may not legitimately insist in his name upon the incorporation of any interpretation of his views into State or ecclesiastical codes except as it applies them to other moral questions such as temperance, truthfulness, chastity, and the like.

This last may be regarded as a dangerous doctrine by some, but it finds increasing adherence on the part of many of the most progressive religious and moral leaders of modern times.

Early Roman Law

The three main roots of Western marriage and divorce law are the Hebrew and Christian doctrines, primitive Teutonic customs, and Roman law.¹ Having considered the origins in the Mosaic Code and in the teachings of Jesus we turn next to a review of the beginnings of divorce

¹ Cf. HOBHOUSE, *op. cit.*, Part I, p. 209 ff.

regulation in the early history of the Romans. While no complete Roman law code has come down to us there are fragments and commentaries sufficient to show the general situation at that time.

The Roman family at the beginning of the historic period was organized on the patriarchal basis in the most highly developed form to be found among early civilizations. The *patria potestas* or paternal sovereignty over the household was virtually absolute. Nowhere was this power established and exercised so completely, nor the status of wife and children so nearly that of slaves. Except as a matter of grace they enjoyed no privileges whatsoever.

Originating at some time prior to the regal period and lasting well toward the end of the Republic, *manus* marriage prevailed. At the time of marriage the bride passed from under the *manus* of her *paterfamilias* to that of her husband to whom, from that time on, she sustained a like relationship.

Three forms of *manus* marriage were recognized at the time of the formulation of the Twelve Tables, 450 B.C. The first was the patrician or semi-sacramental type of *confarraetio*, in which the essential ceremonial feature was the eating of a sacred cake in common—magically symbolic of the newly created unity of the wedded pair. The second was *coemptio*—a fictitious form of sale—the survival of a former practice of wife-purchase but which no longer existed. The third was *usus*, a form of common law marriage which became legal and passed into *manus* if the wife remained in the domicile of her husband for a year without absence for three consecutive nights.

But there are evidences in the Twelve Tables of the breakdown of this highly developed system and of the emergence of the order of "free marriage" or marriage without *manus*. Just when the process of change began we do not know, but by the end of the Republic, *manus* marriage, largely had been superseded by the new type. In this form mutual

consent was recognized and sometimes legally required, and while the wife was not completely absolved from the *manus* of her father, she was from that of her husband. Thus Professor L. T. Hobhouse remarks: "The Roman matron of the Empire was more fully her own mistress than the married woman of any earlier civilization, with the possible exception of a certain period of Egyptian history, and it must be added, than the wife of any later civilization down to our own generation."¹

Here, as elsewhere, divorce conformed to the nature of marriage. In the early *manus* form the husband's theoretical right to divorce his wife was practically absolute, except as he was restrained by property considerations, public opinion, or by the "advice" of the Censors. The wife had power neither to institute, to require, nor to prevent divorce.

Procedure was more or less rigidly prescribed. Marriage by *confarreatio* could be dissolved only by the counter-sacrifice of *differeatio*, which Plutarch described as an "awful rite" and which Fowler assumed to have been "used only for penal purposes."² *Coemptio* and *usus* marriages were dissolved legally by the ceremony of *remancipatio*, which Rudolph Sohm suggests "was not so much an act of divorce as an act of discharge or repudiation."³

It appears that at no time was Roman marriage indissoluble and that provision was made in the law for its dissolution, but all historians agree that at this period it was extremely rare. Professor Hobhouse says: "In practice marriage was so nearly indissoluble that the divorce of his wife by Spurius Carvilius Ruga in B.C. 231 was declared to be the first instance known since the foundation of the city. On the other hand, it must be remembered that the unfaithful wife might be put to death without trial, and

¹ *Ibid.*, Part I, pp. 213-214.

² Cf. WESTERMARCK, EDWARD, *The History of Human Marriage*, Vol. III, p. 320.

³ *The Institutes of Roman Law*, p. 475.

that the husband who had other good causes of complaint would be supported by the family council in executing or in repudiating her.¹ This claim of infrequency if construed literally was probably an exaggeration. Ruga's wife was divorced for sterility by order of the Censor and Lord Bryce contends that the sweeping statement of the authorities meant merely that it was the first instance of divorce in which no crime was alleged.²

For some time, however, certain limitations upon the right of the husband to divorce his wife were growing up in the form of prescribed causes. According to Patrick Colquhoun, "The Law of Romulus permitted the husband to repudiate his wife for three causes—adultery, preparing poisons, and the falsification of keys."³ Concerning the law of the Twelve Tables, the same author says:

"We are not aware what were the valid grounds of divorce by the law of the Twelve Tables. That the reciprocal right of repudiation is certain; that the restrictions of Romulus were enlarged admits of just as little doubt; and it may be inferred that any divorce, or at least repudiation, insisted upon for causes other than those mentioned, was visited by the fine to which Spurius Carvillius Ruga was exposed, namely, the forfeiture of half his property to Ceres, and of the other half to the woman; at any rate, the censors and the public opinion appear to have exercised a wholesome restraining influence, tending to check liberty and temerity."⁴

The conditions which produced the change from *manus* to free marriage affected likewise a radical change in the status of divorce. The process was the work of centuries but in the end the results appeared as little short of revolutionary. Just as marriage became a simple private agreement on the basis of mutual consent, so divorce likewise became

¹ *Op. cit.*, p. 212.

² *Cf. Studies in Jurisprudence*, Vol. II, p. 403.

³ *A Summary of the Roman Civil Law*, Vol. I, p. 527.

⁴ *Ibid.*, Vol. I, pp. 528-529.

an informal transaction without court or magisterial intervention, by joint agreement, or at the behest of either party. "To this liberty," says Professor G. E. Howard, "there was but one exception, the freedwoman might not repudiate her patron, her former master, who had taken her in marriage. In all other cases the divorce, however arbitrary or unjust, was legally effective."¹

Another aspect of the transition is described by Westermarck: "The rules of divorce which were recognized in the case of free marriage were afterwards extended to marriage with *manus*. A wife *in manu* could not, it is true, directly affect the extinction of the *manus* by means of a *repudium*; but according to the view of the later times, the wife's *repudium* operated indirectly to dissolve even marriages with *manus*, by compelling the husband in his turn to take all necessary steps for the purpose of extinguishing the *manus*. And in the end marriages with *manus* fell into disuse altogether."²

Thus from a condition in which divorce was almost non-existent the situation had changed to that in which it had become one of exceptional frequency, which called forth satirical comments by Tacitus and other writers.

On the changed legal attitude involved, Professor Munroe Smith says:

"Until some modern statute-maker shall allow the husband to repudiate the wife at his own good pleasure without judicial proceedings, on the sole condition that, if the repudiation be on other than certain legally specified grounds, he surrender all the property which she may have brought with her and make over to her any property which he may have settled on her for the event of widowhood—until that time the Roman divorce legislation, even in its most restricted phases, will hold the record of latitude."³

¹ *A History of Matrimonial Institutions*, Vol. II, p. 16.

² *Op. cit.*, Vol. III, p. 322.

³ *Political Science Quarterly*, 1905, Vol. XX, p. 318.

In the course of time, quite naturally, there grew up a mass of restrictive legislation embodying current attitudes toward divorce, defining the appropriate grounds upon which the parties might sue.

The following summary of divorce acts in the Code of Justinian, 533 A.D. is given by Colquhoun:

"Mutual consent would not effect a divorce *bona gratia*, although it was allowed for impotency. If it was to be effected *mala gratia*, or by one party, the legal grounds were sufficient without the interference of the clergy, and these grounds may have consisted in a certain incompetency, or in the delict of one party called *divoriturum ob indignationem*. Six of these grounds were in favor of the man as against the woman: for conspiracy against the state without his knowledge, which Justinian terms the most damnable of crimes; for adultery; for attempting her husband's life, or even not protecting him from danger; for absenting herself covertly from the house; for attending public spectacles without his permission; for holding assignations with men or bathing with them for licentious purposes. In like manner five applied in favor of the woman as against the man: For conspiracy against the state, or concealment of conspiracy; for attempting her life, or omitting to protect her against the attempts of others; for attempting to prostitute her to others; for falsely accusing her of adultery; for not quitting the intimacy of other women after two warnings."¹

Early Germanic Law

Material for this study is meager and difficult of access. Nevertheless a few quotations will throw some light upon historical origins in relation to later developments.

In Tacitus' *Germania*, written in 98 A.D., we find a simple narrative of marriage customs among the indigenous German tribes. Thus: "The matrimonial bond is strict

¹ *Op. cit.*, Vol. I, p. 533.

and severe among them; nor is there anything in their manners more commendable than this. Almost singly among the barbarians, they content themselves with one wife; a very few among them excepted, who, not through incontinence, but because their alliance is solicited on account of their rank, practise polygamy. The wife does not bring a dowry to her husband, but receives one from him. The parents and relations assemble, and pass their approbation on the presents—presents not adapted to please a female taste or decorate the bride; but oxen, a caparisoned steed, a shield, spear, and sword. By virtue of these, the wife is espoused; and she in her turn makes a present of some arms to her husband. This they consider as the firmest bond of union; these the sacred mysteries, the conjugal duties. That the woman may not think herself excused from exertions of fortitude, or exempt from the casualties of war, she is admonished by the very ceremonial of her marriage, that she comes to her husband as a partner in toils and dangers; to suffer and to dare equally with him, in peace and in war: this is indicated by the yoked oxen, the harnessed steed, the offered arms. Thus she is to live; thus to die.”¹

No specific mention of divorce occurs in the *Germania*, but for adultery the husband could disgrace his wife and turn her out of the house, which is regarded as divorce in fact. “Adultery is extremely rare among so numerous a people. Its punishment is instant, and at the pleasure of the husband. He cuts off the hair of the offender, strips her, and in the presence of her relations expels her from his house, and pursues her with stripes through the whole village.”²

From the nature of these statements it is logical to infer that divorce, at that time, was almost unknown or at least exceptionally rare. A few centuries later, however, it had

¹ Oxford translation, c. 18.

² *Ibid.*, c. 19.

become sufficiently common to evolve social procedures and to become established in primitive law.

Little seems to be known about this development prior to the conversion of the Germans to Christianity. For a few of the incidents of this early period we are indebted to Professor Howard. He says: "To analyze the secular laws or ecclesiastical canons relating to divorce, as they were slowly developed on Germanic territory after the conversion, is not an easy task; for they reveal a striving to harmonize in various ways the often irreconcilable elements of Roman, Teutonic, and Christian ideas . . . In law and institutions at the time of conversion they stood about where the Romans were when Roman legendary history begins. With respect to the customs of marriage and divorce they stood even lower; for the earliest collections of folk-laws, some of which were made after the acceptance of Christianity, disclose marriage as a real contract of sale through which the wife in theory, and no doubt often in practice, becomes the husband's chattel. With regard to the primitive law of divorce there is scarcely any direct information. But it seems probable that originally the right of repudiation was the sole privilege of the man, though in practice the arbitrary use of his power must have been restrained by dread of the blood-feud and the fear of pecuniary sacrifice. In the historical period, however, and long after the conversion divorce by mutual agreement seems to have prevailed very widely among Germanic peoples; but with the exception of the *Lex romana Burgundionum* it does not appear to be sanctioned in the folk-laws until the seventh century, which fact has led to the conjecture that this form of separation 'originally alien to the Germanic legal consciousness' was gradually adopted under Roman influence. The folk-laws show that, side by side with divorce by free consent of the parties, the husband still possessed the right to put away his wife for certain specified crimes; or, indeed, without assigning

any cause whatever, though in that case he might suffer serious disadvantage with respect to property."¹

Adultery at this time does not seem to have been a cause for divorce; it was dealt with otherwise. But an interesting attitude is revealed: "Originally . . . by the strict legal theory adultery is not a crime which a man can commit against his wife. He may be punished: indeed very generally in the folk-laws both the guilty persons may be slain when surprised by the aggrieved; but if he be punished, 'it is not for unfaithfulness to his wife, but for violating the rights of another husband.'"²

By the close of the eighth century a marked influence from Christianity appears in the law of the West Goths. "The right of the man to put away his wife is restricted to the one cause mentioned by Matthew; while for two scandalous wrongs [sodomy and forcing the wife to commit adultery] the woman may repudiate the husband and contract another marriage if she likes."³ Technically, Freisen observes, "the wife could never divorce her husband, because she was unable to annul his power (*mundium*) over her but that the law in certain cases deprived him of his *mundium* with the result that the wife could leave him if she pleased."⁴ This, it will be noted, is similar to the problem of *manus* marriage in Roman Law.

Anglo-Saxon Laws

Our sources for the study of these codes on the subject of divorce are comprised in *The Ancient Laws and Institutes of England*, a compilation of the laws enacted by the Anglo-Saxon Kings from Aethelbert to Cnut. Of these the compiler says: "That what we now possess of Anglo-

¹ *Op. cit.*, Vol. II, pp. 34-36.

² HOWARD, *ibid.*, Vol. II, p. 35.

³ *Ibid.*, Vol. II, p. 37.

⁴ Quoted by WESTERMARCK, *The History of Human Marriage*, Vol. III, p. 326, note 2.

Saxon Law is but a portion of what once existed . . . At the same time, we ought not, perhaps, to suppose that, among our Saxon forefathers, any more than among ourselves, there ever existed a complete *Corpus Juris Anglici*, but that their's was also a Customary or Common Law; and that what we still possess, and also the portion that has perished, were either the records of decisions, to serve as precedents for the future, or enactments passed in the 'Witena-gemots' for the repeal, confirmation, amendment, or completion of the law as it then stood."¹ The translator further notes the effects of Norman, Teutonic, and Roman influences. It should be noted also that Christian influences are not wanting. Marriage and divorce are nowhere defined. The origin of customs relating thereto lie back of the formation of the present codes. Traditions of the patriarchal type of the family, however, are strongly in evidence. Marriage is by purchase, the amount of the bride-price being fixed generally by custom or by law. Professor Howard thinks that the position of the wife was very different from that of a chattel. He says: "This fact is not wholly inconsistent with wife-purchase; for as already seen, a certain liberty, even of choice, may be enjoyed by the woman where she is legally the object of sale."² It is probable here that the respect which women enjoyed among Germanic peoples was influential. At any rate, we find much consideration for the feelings of women shown in the following: "And let no one compel either woman or maiden to him whom she herself dislikes, nor for money sell her; unless he is willing to give anything voluntarily."³

Again, the purchase-contract is invalidated if accompanied by fraud: "If a man buy a maiden with cattle, let the bargain stand, if it be without guile; but if their be

¹ *Ancient Laws and Institutes of England*, Vol. I, Preface, pp. vii-viii.

² *Op. cit.*, Vol. I, p. 260.

³ *Laws of King Cnut* (Secular), 75.

guile, [*i.e.* 'if the cattle be diseased or maimed or the goods otherwise defective,' according to the translator] let him bring her home again, and let his property be restored to him."¹

Moreover, the following excerpt seems to indicate that marriage by capture formerly had existed but had now come under the ban of the law in the same interest. "If a man carry off a maiden by force, let him pay L. shillings to the owner and afterwards buy [the object of] his will of the owner.

"If she be betrothed to another man in money, let him make 'bot' with XX shillings."²

The ideal of marriage is lifelong monogamy and without concubinage, although the mention of divorce in the following passages indicates frequent deviations from this standard: "And let every Christian man, for the dread of his Lord, strictly eschew unlawful concubinage, and rightly observe the divine law.

"And we instruct and beseech and, in God's name, command, that no Christian man ever marry in his own family within the relationship of VI persons: nor with the relict of his kinsman who was so near of kin; nor with the relative of the wife whom he had previously had; nor with his godmother, nor with a hallowed nun, nor with one divorced, let any Christian man ever marry, nor any fornication anywhere commit; nor have more wives than one, and let that be his wedded wife; but let him be with her alone, as long as she may live, whoever will rightly keep God's law, and secure his soul against the burning of hell."³

It should be noted here that the rights of property hold the chief place of interest in the legislation, as is the case among many other contemporaneous codes, and penalties

¹ *Laws of King Aethelberht*, 77.

² *Ibid.*, 82-83.

³ *Laws of King Cnut* (Ecclesiastical), 6-7. The same is found in *The Laws of King Ethelred*, Chap. vi, 12.

for all violations of the laws are prescribed in terms of fines or compensations to the injured or to some constituted authority, parental or legal. The division of property in case of separation is legally provided in all cases.

Divorce is taken for granted in the laws and seems to have been allowed by mutual consent or upon the will of either party. It was quite as freely the right of the wife as of the husband, and usually without express reference to the cause, except in infidelity on the part of the wife.

Adultery on the part of the husband is punishable by fine or other pecuniary loss, but does not seem to be a cause for divorce.

"If anyone commit adultery let, him make 'bot' [fine] for it as the need may be. It is a wicked adultery when a married man lies with a single woman, and much worse, with another's wife, or with one in holy orders."¹ "If a married man lie with his own maid-servant, let him forfeit her, and make 'bot' for himself to God and to men: and he who has a lawful wife, and also a concubine, let no priest administer to him any of those rites which ought to be administered to a Christian man; ere he desist, and so deeply make 'bot' as the bishop may teach him; and let him ever desist from the like."²

With the wife the penalty is much more severe and seems to imply cause for divorce in addition to mutilation, loss of property, and disgrace. "If during her husband's life, a woman lie with another man, and it become public, let her afterwards be for a worldly shame as regards herself, and let her lawful husband have all that she possessed; and let her then forfeit both nose and ears: and if it be a prosecution, and the 'lad' [compurgation] fail, let the bishop use his power, and doom severely."³

¹ *The Laws of King Cnut*, (Secular) 51.

² *Ibid.*, 55.

³ *Ibid.*, 54.

Ancient Laws and Institutes of Wales

The Welsh laws are not a systematic code, but the collection and publication of "a complete edition of the Ancient Historians of the realm."¹ It is stated that "the codes which have descended to us are compilations from age to age, as the progress of the community required, and may be considered to afford a view of the legal practises in use at the periods of the various transcripts."² They consist mainly of the following documents: The Venedotian or North Wales Code, about 1080; the Dimetian, or West Wales Code, about 1180; the Gwentian or Southeast Wales Code; and the Welsh or Anonymous Laws, both of later but uncertain dates.

We follow the Venedotian Code in the main as the oldest most complete, and most representative. It is said to be the most ancient manuscript in the Welsh language.

Patriarchal ideas and customs appear to be in the process of disintegration. Wife-purchase still survives in form at least, although the bride is often spoken of as "given." The husband is accounted as "owner of his lawful wife," and since he is "proprietary lord" over her "it is not right to take from another his appropriation either of person or property."³

But this power had become rather narrowly limited and the laws deal extensively with the growing rights of the wife. For example two definite restrictions are placed upon the freedom of the man in regard to marriage. "If a maid be given to a man, and she be found by the man to be deflowered, and he allow her to remain in his bed until the following morning; he cannot on the morrow, take away any of her due."⁴ Again, common law marriage, after the expiration of seven years becomes legal and

¹ *Ancient Laws and Institutes of Wales*, Vol. I, Preface, p. vii.

² *Ibid.*, p. xviii.

³ *Welsh Laws*, Vol. II, Book XIII, Chap. ii, 244.

⁴ *Venedotian Code*, Book II, Chap. i, 27.

"thense-forwards he is to share with her, as with a betrothed wife."¹

Divorce also, it appears, has passed beyond the one-sided patriarchal right of the husband and is recognized by mutual consent or at the option of either party, sometimes at will, but usually upon specified grounds.

The most significant thing with which the law deals, however, is not the causes and procedure of divorce, but property rights, namely, the division of the property of the parties together with the costs and penalties incurred in the separation.

There are certain "exemptions" which are not affected by divorce regardless of the causes for which it may be obtained:

"The three exclusives of a man when he shall separate from his wife: his horse, with the whole of his arms; the tunc of his land, to enable him to join the army, which he is not to share with anyone; the third is, his wynebwerth, [fine payable for insult] which comes to him, on account of her permitting another to be connected with her: she is not to have a share of these when they separate."²

"The three peculiars of a woman: her cowyll, her gowyn, and her saraad: the reason these three are called three peculiars is, because they are the three proprieties of a woman, and cannot be taken from her for any cause: her cowyll is what she receives for her maidenhood; her saraad is, for every beating given her by her husband, except for three things; and these three for which she may be beaten, are, for giving anything which she ought not to give; for being detected with another man in a covert; and for wishing drivel upon his beard; and, if for being found with another man he chastise her, he is not to have any satisfaction beside that; for there ought not to be both satisfaction and vengeance for the same crime; her

¹ *Ibid.*, Book II, Chap. i, 31.

² *Welsh Laws*, Vol. II, Book XIV, Chap. iii, 19.

gowyn is, if she detect her husband with another woman, let him pay her six score pence for the first offence, for the second one pound; if she detect him a third time, she can separate from him, without losing anything that belongs to her: and the property she may obtain for the above three things is to be apart from her husband; and, if she endure, without separation, after the third offence, she is not entitled to any satisfaction."¹

Certain causes entitled the wife to divorce without economic loss: "Should her husband be leprous, or have fetid breath, or be incapable of marital duties; if on account of one of these three things she leave her husband, she is to have the whole of her property."²

In other respects also the wife's rights were protected: "If a man take a wife, by gift of kindred, and leave her before the end of seven years; let him pay her agweddi [dower] to her." . . . "If she be left after the end of seven years, let there be an equal sharing between them; unless the privilege of the husband entitle him to more."³ . . . "If they separate before the seventh year, let there be paid to her agweddi, her 'argyvreu' [a maiden's paraphernalia], and her 'cowyll'; and if she was given when a maid, whatever of those things remain she shall have: and if she leave her husband before the seventh year, she loses all these, except her cowyll, and her wyneb-werth [fine payable for insult] for his gowyn [concupiscence]."⁴

The husband also had certain pecuniary protection against the demands of an unfaithful wife. She lost all claim to property except her "exemptions" if she left him before the end of the seventh year, as just noted above. Again, "If a wife be guilty of an odious deed along with another man, whether by kiss aut coitu aut palpando, the

¹ *Venedotian Code*, Book II, Chap. i, 39.

² *Ibid.*, Book II, Chap i, 10.

³ *Gwentian Code*, Book II, Chap. xxix, 5 and 12.

⁴ *Venedotian Code*, Book II, Chap. i, 9.

husband can repudiate her; and she is to forfeit the whole of her right for giving a kiss, without either of the others."¹

It should be noted here, as in early Germanic law, that the man's adultery was an offense against another husband rather than against his own wife: "If a man have connection with the wife of another, he is to pay him his saraad, once augmented; because it causes family animosity."²

No restriction seems to deter the husband from remarriage after divorce. The wife's freedom, however, is limited by the action of her husband, at least in certain cases. "If a man willeth to separate from his wife, and after he shall have separated, willeth another wife; the first, that has been divorced, is free; for no man is to have two wives."³ "If a man part from his wife, and she be minded to take another husband, and the first husband should repent having parted from his wife, and overtake her with one foot in the bed and the other outside the bed, the prior husband is to have the woman."⁴

The Brehon Laws

The Ancient Laws of Ireland are "a collection of rules which have gradually been developed in a way highly favorable to the preservation of archaic peculiarities."⁵ According to Laurence Ginnell they are "a great collection, not of statutes, proclamations, or commands of any sort, but of laws already known and observed from time immemorial; . . . They explain that the men of Erin having considered the matter in times past decided that it was best it should be so, and that nobles, chiefs, and tribes have loyally observed these laws."⁶

¹ *Dimetian Code*, Book II, Chap. xviii, 31.

² *Ibid.*, Book II, Chap. xviii, 32.

³ *Venedotian Code*, Book II, Chap. i, 54.

⁴ *Ibid.*, Book II, Chap. i, 18.

⁵ MAINE, SIR HENRY, *Early History of Institutions*, p. 11.

⁶ *Brehon Laws*, pp. 26-27.

The chief document of this collection is the *Senchus Mor* or Grand Old Law, dating from 438 A.D. which was claimed to have been compiled under the direction of St. Patrick. It is the oldest and most important of the ancient laws and "exhibits the remarkable modification which these laws of pagan origin underwent in the fifth century, on the conversion of the Irish to Christianity."¹

What, precisely, the ancient form of the Celtic family was, remains largely a matter of conjecture, but Ginnell thinks that the marriage relation was extremely loose and easily dissoluble.² Symbols of wife-capture and wife-purchase are to be found in Celtic customs but the paternal power, although frequently referred to, had become faint at the time the Brehon Laws assumed their present form.³ W. N. Hancock and Thaddeus O'Mahony assert in the preface to Volume II of the *Ancient Laws* that, "The provisions of the Irish family law do not appear to have any connection with the ancient Roman Law. The Irish law demands for the mother a position equal to that of the father, and there is no trace of the exercise of that arbitrary power which was wielded by a Roman father over the members of his family, and which in effect reduced them to a condition of mere slaves."⁴ The same authors add a most interesting comment: "At a time when the English law of husband and wife [1869], which has now, for three centuries, been substituted for Irish law in this country, has been condemned by a Committee of the House of Commons, as unjust toward the wife, and when the most advanced of modern thinkers are trying to devise some plan by which wives may be placed in a position more nearly approaching to equality with the husband, it is interesting to discover in the much despised law of the ancient Irish, the recognition of the principle on which

¹ *Ancient Laws of Ireland*, Vol. I, Preface by W. N. Hancock, p. v.

² Cf. *Brehon Laws*, pp. 211-214.

³ Cf. Maine, *op. cit.*, pp. 218-220.

⁴ *Ancient Laws of Ireland*, Vol. II, Preface, pp. lv-lvl.

efforts are being made to base our legislation on this subject."¹

Divorce seems also to have been easy, to have been allowed whenever "hatred" arises or other "justifying necessity,"² and to have been obtained by mutual consent or at the discretion of either party. But what appears remarkable and unique is, that it could be secured more easily by the wife than by the husband. At least far more enactments are to be found which protect the rights of wives than of husbands. Many of the regulations here, as among others previously noted, have to do with property considerations.

"If they separate, let every separation be without fraud; if their separation be from choice, let them divide lawfully."³

"If they (a man and a woman) separate, and that by mutual consent, and their property be equally good at their separation, what they have consumed of each other's property without dishonesty is remitted, together with equal property at separation that there may be no fraud."⁴

In the following instances the husband has the right of redress:

"There are with the Feine seven obstructions in law, which it is difficult to shield, where neither chieftain nor church has any right, nor the protection of sanctuary to shield them: . . . [Seventh] to shield a woman who elopes from the law of cohabitation,—What God hath joined together, let not man put asunder."⁵

This is a limitation on the wife's right of separation without adequate cause. Her "elopement" is unlawful "until she leaves the full amount of separation which is due of her."⁶

¹ *Ibid.*, Vol. II, Preface, p. lvii.

² Heptads, *Ancient Laws of Ireland*, Vol. V, p. 133.

³ *Senchus Mor*, *Ancient Laws of Ireland*, Vol. II, p. 363.

⁴ *Ibid.*, Vol. II, p. 389.

⁵ Heptad LI, *Ancient Laws of Ireland*, Vol. V, p. 291.

⁶ *Ibid.*, p. 293.

"The bondsman has four kinds of honor-price . . . [Fourth] from criminal intercourse with his wife . . . If the bondsman has a free-born wife, he has honor-price for another's cohabiting with her, and he has honor-price for a wound inflicted on her body. If, however, she is a bond woman he has, he gets honor-price for another's cohabiting with her, but no honor-price for a wound inflicted on her body; for no one has honor-price for damage done to aught of the property of another, and the bond person is the property of another."¹

The chief concern in the following laws are the interests of women. Their rights are protected and their privileges are defined.

"There are seven in a territory who are prohibited from the right of contracting marriage, whose wives [*i.e.*, in case women have married them in ignorance of 'these blemishes'] quickly turn away from them from cohabitation, so that what was given *as dowry* is forfeited to them: a barren man; an unarmed man; a man in holy orders; a churchman [a bishop]; a rockman [without land]; a very gross [fat] man; a man who discloses of bed, [*i.e.*, who reveals marital secrets]."²

"There are with the Feine seven women, who though bound by son and security, are competent to separate from cohabitation, whatever day they like; and whatever has been given them as their dowry, is theirs by right: a woman of whom her husband circulates a false story; a woman upon whom her husband gives circulation to a satire until she is laughed at; a woman upon whom a check-blemish is inflicted; a woman who is sent back and repudiated for another; a woman who is cheated of bed-rights . . . ; a woman to whom her mate has administered a philtre when entreating her, so that he brings her to fornication;

¹ *Of the Removal of Contracts, Ancient Laws of Ireland*, Vol. V, pp. 513-515.

² *Heptad III, Ancient Laws of Ireland*, Vol. V, p. 133.

a woman who is not able to receive her desire in the community of marriage."¹

"There are seven separations that are perpetual in the law of marriage, which do not deserve debts, nor fines, nor sick-maintenance [*i.e.*, as regards the dowry]: a departure from disease; a departure from illness; coming into a ship; starting upon a pilgrimage; going in death; taking a staff; departure from a blemish that is not cured in the opinion of a judge, a doctor, or a chief; to seek a friend beyond the boarder; setting out to avenge an aggression; to seek children if either of the parties be barren; damage of a sane person."²

Upon these laws Ginnell, in contrast with the statement made by Hancock, quoted above, makes the following comment:

"Apparently the law on marriage and the dissolution of marriage was wholly pagan, and never underwent any modification in Christian times; perhaps because it was little resorted to except by the wealthy, and they had sufficient influence to keep it unaltered."³

¹ *Heptad LII, ibid.*, p. 293.

² *Heptad LIII, ibid.*, p. 297.

³ *Op. cit.*, p. 214.

CHAPTER FOUR

DIVORCE IN MODERN CIVILIZATION

THE MOST OUTSTANDING FACT DISCLOSED IN THE HISTORY of divorce among preliterate peoples and in the ancient law codes is that the institution of marriage was from time immemorial, and has continued to be, a social product of practical human expediency which became imbedded in the folkways and *mores* and was transmitted from generation to generation, at first in oral tradition and later through customary law, and that the ideas and attitudes toward divorce, together with the attendant customary practices and legal procedures, have been determined by the nature and forms of that institution. Adequate appreciation of this fact will enable us, with more rational comprehension, to follow this same process in the changes and vicissitudes which have accompanied the developments in modern civilization.

It should be pointed out clearly at this time also, that the customs and laws relating to divorce among the early civilizations, preliterate and literate, had for their main, if not for their sole purpose, the regulating of procedure and the protection of the personal and property rights of the individuals concerned. There was little or no effort on the part of the group to control divorce in the sense of limiting its frequency or diminishing its volume. Separations occurred as a result of experience, and the inherent right of the individual, especially of husbands, in such cases seemed rarely to have been questioned. Only as injustice or injury was done to one or the other of the parties or to their natural dependents or sponsors was the law

invoked. Not until we arrive at a time when the concepts of marriage make its dissolution an "evil in itself" do we come upon organized and purposive efforts to exert quantitative control by outlawing divorce through restraining the parties from separating and by denying the right to divorce.

The chief characteristic which distinguishes our age from those preceding it is the domination of religion over marriage and divorce. At no time or place, prior to the medieval period in Western Europe, has marriage ever been strictly a religious institution. It is true, of course, both among tribal societies and in early civilizations, that marriage, like every other important event in human experience, acquired a degree of magical and religious significance and that ceremonies of this nature were performed in connection with it. But these rites, while they were regarded as possessing a variety of functions, such, according to Professor Edward Westermarck, as enhancing some specific interest like fecundity or marital bliss, or promoting the general well-being of the couple or protecting them against evils,¹ had, ordinarily, nothing to do with the validity of marriage.

Thus religious festivities in connection with marriage are found among many peoples both savage and civilized. They frequently take the form of priestly sacrifices to the gods or to ancestral spirits, and are accompanied by prayers or benedictions. Deities were invoked at weddings in ancient Greece and in India. There were animal sacrifices at the marriage of *confarreatio* in Rome in the early period. According to Westermarck, "The legal importance which has been attached to the religious ceremony in Christian countries has no counterpart in either Jewish or Muhammadan law. Although the former regards marriage as a divine institution, the omission of the benediction would not invalidate a marriage. The priestly benediction is

¹ Cf., *A Short History of Marriage*, p. 224.

mentioned neither in the Bible nor in the Talmud; and the regular presence of a Rabbi at a wedding is not earlier than the fourteenth century. Nor does Muhammadan law require religious rites for the contraction of a valid marriage. In all cases the religious ceremony is left entirely to the direction of the *qāzī* or person who performs the ceremony and consequently there is no uniformity of ritual."¹

Reference is made in the New Testament to the presence of Jesus at a wedding in Cana of Galilee, but he was there merely as an invited guest and not in any religious capacity. Nothing is said of the nature of the ceremony. His notable contribution was simply in connection with the convivial entertainment.²

While religious and magical rites were common at marriages among the early Teutonic and Anglo-Saxon peoples, marriage itself was regarded as a natural or civil institution completely under secular control.

The most significant aspect of religious influence, so far as our investigation is concerned, is to be found in the various concepts of the nature of marriage which have prevailed in the beliefs and teachings of the Christian Church and which have determined the ecclesiastical attitude and policy toward divorce.

The founder of Christianity instituted no marriage rites but it has been assumed that from the beginning marriage among Christians was accompanied by ceremonies of suitable religious nature. The teaching of Jesus and his disciples, however, concerning the divine origin and sanctity of marriage have been of the most profound significance in the development of ecclesiastical doctrines on the subject during the subsequent centuries. The extension of ecclesiastical control and the dogma of the sacrament of marriage have played such a large part in the history of marriage and divorce in Western civilization that

¹ *Ibid.*, p. 226.

² Cf. *John* 2:1-11.

an adequate comprehension of their modern aspects cannot be had without a slight acquaintance, at least, with the factors which have given direction and character both to ecclesiastical and to secular legislation and to the molding of public opinion into its present form.

The Rise of Ecclesiastical Marriage

This historical process is given with such completeness of detail by Professor George E. Howard, and is so thoroughly documented, that we cannot do better than to present a digest of his account, and chiefly in his own language.

"It is a noteworthy fact that the early church accepted and sanctioned the existing temporal forms of marriage. . . . During the period preceding the Teutonic invasion, broadly speaking, the Church adhered to the Roman law and custom; thereafter those of the Germans, even when the marriage consisted in the formal sale and tradition of the bride, were accepted . . . The only innovation effected by the primitive church was of a purely religious character. Though she might content herself with the Roman or the Germanic forms of marriage, there remained an 'ethical mission' peculiarly her own. In order at the very outset to fill the wedded life with the blessing and spirit of the Christian life, the church, without reference to the matrimonial law in force, demanded of her members that the very beginning of marriage should be placed under the word of God and be hallowed by its power. Hence from the first century onward, we find evidences of a priestly benediction usually in connection with the betrothal and probably with the nuptials.

"1. It seems probable, then, that during the first three or four centuries Christian marriages were not as a rule celebrated in church. The betrothal or nuptial benediction was not essential to a valid marriage, however important it may have been regarded from a religious point of view.

Gradually it became an established custom for the newly wedded pair, after solemnization of the nuptials, to attend religious services in the church and partake of the sacrament, at the close of which the priest invoked a blessing upon the future married life. But at first the church service was the ordinary service; only after a considerable interval were phrases introduced into the prayers especially applicable to the wedded pair . . . But this religious act had no legal significance. No doubt it was performed by all good Christians as a religious duty. The benediction was invoked on the married life just as it was invoked on all important undertakings. It was observed as a fitting solemnity for a believer and not as a part of the marriage.

"2. The introduction of the bride-mass constitutes the second stage in the history of clerical marriage. This use of the bride-mass is disclosed by the oldest *sacramentaria* of about the fifth century. It consisted of phrases directly applicable to the nuptials, but 'the function of the priest is still merely religious' . . . The nuptials have already been solemnized, whether in the presence of the priest or not the formularies do not explain . . . In this bride-mass may be found the genesis of the ecclesiastical liturgy; but it is a purely religious office and adds nothing to the validity of the marriage contract which is still a private matter resting solely upon their mutual consent."

3. In the third stage, falling between the tenth and twelfth centuries the clergy make rapid progress. Marriage is no longer a strictly private transaction. "The priest, inheriting the functions of the ancient orator, directs the entire celebration. The nuptial ceremony takes place before the church door. This custom is the recognition of the temporal nature of wedlock, which ought therefore to be celebrated before and not within the consecrated building." The ceremony is then followed by the bridal mass within the church itself. But even now the priest is legally superfluous since the religious service adds nothing

to, nor does its omission detract from, the validity of the nuptial contract.

4. Almost from the beginning there was manifest an effort to gain the recognition of the priestly office as essential to Christian marriage. The final step in acquiring the peremptory right to perform the ceremony occurred about the opening of the thirteenth century as a result of certain changes in social custom. From this time on the priest appears with authority as one exclusively qualified by his religious office to solemnize the nuptials, and lay performance of the ceremony is invalidated.¹

This last stage Professor William G. Sumner regards as the result of "the astounding movement [in the thirteenth century] by which the church remodeled all the ideas and institutions of the age, and integrated all social interests into a system of which it made itself the centre and controlling authority."²

The final stage in the process of complete ecclesiastical domination, not merely over the entrance into marriage but over the entire institution, in which the Canon Law "supplanted and eliminated the secular jurisdiction, and alone regulated marriage in Europe,"³ awaited the complete development of the dogma of the sacrament of marriage.

The Influence of Asceticism

During the entire period of the development of ecclesiastical marriage the Church was faced with an increasingly aggravating dilemma. It found itself more and more responsible for an institution which was being condemned with increasing vehemence as unholy and base by the Church Fathers themselves because of their adherence to the doctrine of asceticism.

¹ *History of Matrimonial Institutions*, Vol. I, pp. 291-309.

² *Folkways*, p. 411.

³ EMBREIN, ADHÉMAR, *Le mariage en droit canonique*, Vol. I, p. 3.

Professor Howard says, "It was most unfortunate that the Christian conception of the nature of marriage should have sprung from asceticism, and that the verbal subtlety of the schoolmen should have produced the cardinal definitions upon which the validity of marriage contracts, and therefore the practical administration of matrimonial law, were made to depend."¹

The roots of asceticism, prior to the advent of Christianity are found among the Hindus, and in Greece and Egypt, and also in the cult of the Essenes among the Jews—a cult which idealized celibacy, conspicuously out of harmony with the national feeling in regard to marriage, and which is regarded generally as influential in shaping the attitude of Jesus on that subject.

In the fourth century Christian asceticism developed in Alexandria where nine monasteries for men and one nunnery for women were established. From thence the movement spread by way of Syria and Greece to Rome.² There is much probability also that St. Paul's ideas in reference to women and marriage were influenced by the sex-psychopathy of Plato.³

There were reasons of practical nature lying within the social situation which favored the reactionary attitude of the Fathers toward marriage but for the existence of which the result might have been different. "In the decline of the Roman empire, woman was not a helpmeet for man, and few traces are to be found of those graceful conceptions which Western imagination has grouped round wedded love and home affections. The result was that the gross, coarse, material, carnal side of marriage being alone apprehended, those who sought to lead a spiritual life, that is, the clergy, instead of 'adorning and beautifying

¹ *Op. cit.*, Vol. I, p. 324.

² Cf. MESSER, MARY BURT, *The Family in the Making*, pp. 144-145.

³ SCHROEDER, THEODORE, "The Evolution of Marriage Ideals," *The Arena*, December, 1905, p. 580.

that holy estate' and lifting it up with themselves into a higher sphere and purer atmosphere, regarded it rather as a necessary evil to be shunned by those who aimed at a holier life, than that of the majority."¹

Furthermore there are ample Scriptural texts which supported the ascetic view of women and marriage. Eve was the original temptress for whose evil designs Adam was driven from the Garden of Eden and compelled to earn his living "by the sweat of his brow." Woman was therefore the cause of "original sin" and the "Fall." Tertullian condemns women in general on this ground with ruthless severity. "And do you not know that you are (each) an Eve? The sentence of God on this sex of yours lives in this age: the guilt must of necessity live too. *You* are the devil's gateway: *you* are the unsealer of that forbidden tree; *you* are the first deserter of the divine law. *You* destroyed so easily God's image, man. On account of *your* desert—even the Son of God had to die."² The teachings of Jesus, of St. Peter, and of St. Paul³ were invoked to support the theory of woman's inferiority and consequent dependence, and chiefly on the ground of the impurity of the sex relation.

It was the application of the ascetic doctrine of the inhibition of all natural human desires in the interest of holiness to the problems of sex and marriage that concerns our study. The early Christian Fathers held a lamentably low estimate of women and marriage. Professor Willystine Goodsell says: "It would almost seem as if the preachers of asceticism [the Church Fathers] were unable to regard women in any other light than as an incitement to sexual indulgence. Therefore their teachings reveal a prurience that is more than a little distasteful to present day readers."⁴

¹ HOWARD, *op. cit.*, Vol. I, p. 329.

² Quoted by MESSER, *op. cit.*, p. 150.

³ Cf. *Matthew* 19: 10-12, *I Corinthians* 7: 1-9 and 14: 34-5, *I Peter* 3: 1-6.

⁴ *Problems of the Family*, p. 54.

Only a few citations are given to show the extent to which this doctrine was carried: Tertullian exclaims: "Woman, thou should ever walk in mourning and rags, thy eyes full of tears, present the aspect of repentance to induce forgetfulness of your having ruined the human race. Woman thou art the gate of Hell." And again the same author: "Celibacy is preferable, even if the human race goes to the ground." Hieronymus says: "Marriage always is a vice; all that we can do is to excuse and cleanse it." Origen declares: "Marriage is something unholy and unclean, a means for sensuality."¹

This seemingly irreconcilable contradiction presented in the ecclesiastical control of a "vile" institution in the name of religion might have remained unsolved but for another factor in the problem which we must consider next.

The Doctrine of Sacraments

Growing up simultaneously with the two movements already sketched there was a third which was destined to play a strategic rôle in the future attitude of the Church toward marriage and divorce, namely, the theory of sacraments.

As early as the middle of the second century in the writings of Justin Martyr and Irenaeus we find a degree of mystic significance attached to certain uses of the term "divine mystery" in the teachings of Jesus and St. Paul.² Early in the third century Tertullian, the first Latin Father, translated the Greek word for "mystery" into the Latin term *sacramentum* and from this time the concept of the sacraments began to assume the character of a religious dogma. In Tertullian, however, the idea remains vague and without precise definition, but he applies it to the simple symbolic rites of baptism and the Eucharist and thus converts them into "divine sacraments."

¹ Quotations are from AUGUST BEBEL, *Woman under Socialism*, translated by Daniel de Leon, p. 51.

² Cf. Mark 4: 11; Ephesians 5: 32.

Some progress is made in the development of the sacramental theory in the writings of Cyprian, Hilary, and Ambrose but not until we reach the opening of the fifth century do we arrive at a clear definition of the subject. St. Augustine defines the sacrament as a "sacred sign" or again "signs, when they pertain to divine things, are sacraments."¹ The classical definition of the sacrament which has always been attributed to St. Augustine is an inexact quotation by Berengar of Tours: "A sacrament is the visible sign of invisible grace."²

Two other contributions of St. Augustine were, first, the distinction which he drew between the sacraments and the virtue which they impart, a matter of great importance in the future development of the system, and, second, the extension of the concept to a considerable range of subjects in both the Old Testament and the New, in which marriage is included.

For several centuries the whole subject remained in the field of discussion and controversy. Its final development into a complete theological system, however, awaited its elaboration at the hands of the canonists and schoolmen, among whom the most prominent were Anselm, Gratian, Abelard, Hugo of St. Victor, Peter Lombard and St. Thomas Aquinas.

In defining a sacrament the schoolmen started with St. Augustine's definition but went beyond him in the degree of efficiency which they ascribed to it. They assert that the sacraments are more than mere channels of grace; they have a virtue inherent in themselves. They "contain and confer grace," even without active faith on the part of the recipient.

Following are three definitions which represent the final achievement of scholastic thinking on the subject:

¹ Quoted by ROGERS, E. F., *Peter Lombard and the Sacramental System*, p. 25.

² Cf. *ibid.*, pp. 36, 49.

Hugo of St. Victor—"A sacrament is a corporeal or material element sensibly presented from without, representing from its likeness, signifying from its institution, and containing from sanctification some invisible and spiritual grace."¹

Summa Sententiarum [anonymous]—"A sacrament is the visible form of invisible grace gathered therein, which the sacrament itself confers; for it is not only the sign of a sacred thing, but also the efficacy."²

Peter Lombard—"For a sacrament is properly so called, because it is a sign of the grace of God and the expression of invisible grace, so that it bears its image and is its cause. Sacraments, therefore, were not instituted merely in order to signify something, but also as a means of sanctification."³

It should be noted in passing that the definitions in the *Summa* and in the *Sentences* are a little more elastic than that of Hugo of St. Victor's which because of the dependence of the sacrament upon a "corporeal or material element" logically excluded such subjects as penance and marriage from the list.

The number of the sacraments was long in controversy. Different writers included various subjects. But the more definite concept of the nature of a sacrament excluded many ceremonies which were consistent with St. Augustine's definition of a sacrament as a "sacred sign." In the *Distinctions I to XXVI* in Book IV of Peter Lombard's *Sentences*, 1164, the number is fixed at seven, each clearly defined in its meaning and scope. They are: Baptism, Confirmation, the Eucharist, Penance, Extreme Unction, Ordination and Marriage. There is nothing new in this list, all having been called sacraments before the Lombard's time. It was centuries, however, before this "sacred number" finally was accepted as in the Council of Trent, 1563,

¹ Quoted by ROGERS, *ibid.*, p. 70.

² Quoted by ROGERS, *ibid.*, p. 71.

³ *Sentences*, Book IV, Distinction I, translated by Rogers, *ibid.*, p. 80.

but in all the Councils following the date of the *Sentences* the lists including marriage were approved.

Marriage as a Sacrament

The twofold result of the application of the sacramental doctrine to the sex and marriage problem, as interpreted by the Christian Fathers under the influence of their ascetic creed, was sacerdotal celibacy and sacramental marriage. With the former we are concerned only as, according to Professor Goodsell, "The exaltation of celibacy as a holier state than matrimony and more pleasing to God dealt a blow at the dignity and purity of marriage from which it had not recovered at the close of the Middle Ages."¹ Or as Professor Howard puts it: "History all too plainly shows that the benefits conferred by monasticism and the enforced celibacy of the secular clergy come far short of balancing the evils flowing from the conception of wedlock as a 'remedy for concupiscence' . . . On the other hand, celibacy bred a contempt for womanhood and assailed the integrity of the family."²

It was the application of the doctrine of the sacrament to marriage and the inevitable consequences resulting therefrom, affording as it did an escape from the vexatious predicament above referred to, that is important for our consideration.

It should be pointed out in all fairness, however, that the sacramental theory was an independent theological development which originally had nothing to do with this problem. It is important to note that marriage always stands at the end of the lists of sacraments; a true indication of the fact that it was a minor factor *per se* in the development of the great theory which was made to include it. It was the legitimate outcome of the theory, rather than

¹ *Op. cit.*, p. 46.

² *Op. cit.*, Vol. I, p. 331.

its avowed purpose, that resulted in placing marriage in this category.

It is hardly to be assumed that even Peter Lombard appreciated the practical implications of the doctrine of sacramental marriage since his exposition and defense appear to be of purely scholastic character. Because his statement of the theory constitutes the basis of all future development a digest is submitted.

He says: "Although the other sacraments took their rise after sin and on account of sin, we read that the sacrament of marriage was instituted by the Lord even before sin, yet not as a remedy but as a duty . . .

"Now the institution of marriage is two-fold: one was instituted before sin in paradise as a duty, that there might be a blameless couch and honorable nuptials; as a result of which they might conceive without passion and bring forth without pain; the other was instituted after sin outside paradise for a remedy, to prevent unlawful desire; the first, that nature might be multiplied, the second, that nature might be protected, and sin repressed. As Augustine testified 'what is a duty for the sound is a remedy for the sick.' For the infirmity of incontinence which exists in the flesh that is dead through sin, is protected by honorable marriage lest it fall into the ruin of vice. If the first men had not sinned, they and their descendants would have united without the incentive of the flesh and the heat of passion; and as any good deed deserves reward, so their union would have been good and worthy of reward. But because on account of sin the law of deadly concupiscence has beset our members, without which there is no carnal union, an evil union is reprehensible unless it be excused by the blessings of marriage.

"The first institution was commanded, the second permitted. For we learn from the Apostle, that marriage was permitted to the human race for the purpose of preventing fornication.¹ But this permission is voluntary, not neces-

¹ *Corinthians* 7: 6.

sary, otherwise the one who did not do it would be a transgressor.

"Now a sacrament is a sacred sign. Since therefore marriage is a sacrament, it is also a sacred sign and of a sacred thing, namely, of the union of Christ and the Church, as the Apostlesays, 'this is a great sacrament.'"¹ "Marriage is also a sign of the spiritual union and affection of souls, by which husbands and wives ought to be united."²

Notwithstanding the fact that the doctrine of the sacrament of marriage had developed as a logical part of a system quite independently of any extraneous issue in which the Church might in the future be involved, it presently became obvious that it did solve the problem of the "great dilemma." The otherwise unholy marital relationship was now, through the instrumentality of the divine sacrament, cleansed and purified and thus a fit subject for the fostering protection and control of the Church. Thus reason came to the rescue and saved the Church from a conspicuous and irrational inconsistency into which it had unwittingly been precipitated by the logic of events.

It is needless to trace further the historic development of the system. It is sufficient to state that the sacrament of marriage became an established dogma of the Church. It was confirmed in the Council of Florence in 1439 and reaffirmed finally in the Council of Trent in 1563. In this latter council the entire jurisdiction of marriage together with all its incidents was placed under ecclesiastical control. Since that time marriage, as viewed by the Roman Catholic Church, is valid only as a sacrament and when consecrated in accordance with the rites of the Church by her duly accredited ministers.

¹ *Ephesians* 5:31-2.

² *Sentences*, Book IV, Distinction XXVI, translated by Rogers, *op. cit.*, pp. 243-246.

Effects upon Divorce

As pointed out previously, marriage and divorce were not under ecclesiastical but under secular control during the early centuries of the Christian Era. But while the Church had no jurisdiction in these matters it could and did express its views and uphold its ideals. From the outset the Christian teachers erected high ethical standards of conduct within the marriage bond and condemned strongly the laxity of divorce customs in contemporary society.

Between this early advocacy of reform and the final achievement of complete ecclesiastical domination on the basis of the canonical theory of the absolute indissolubility of sacramental marriage, intervenes the struggle already considered which lasted more than a thousand years.

At first some of the Fathers were inclined, on the strict interpretation of the teachings of Jesus and St. Paul, to sanction divorce for adultery and for the "Pauline privilege" of desertion. Among others the word "adultery" was construed in an allegorical sense, and a few other causes, which were equally as effective as carnal transgressions in dissolving the marriage bond, were approved.

Again it was St. Augustine who formulated the doctrine of the Church on divorce as he had done in the case of the sacraments. Esmein says: "It is truly in St. Augustine that we see established for the first time a logical and necessary relation between the sacrament and indissolubility,"¹ and it was doubtless chiefly due to his influence that the doctrine of the indissolubility of marriage, asserted in principle in the Council of Arles in 314, was authoritatively proclaimed as a canon of the Church in the Council of Carthage in 407.²

While the Church thus early took a firm stand on this ground it was unable to incorporate its decrees in the laws of the State. Even the early Christian emperors, following

¹ *Le mariage en droit canonique*, Vol. I, p. 65.

² Cf. HOWARD, *op. cit.*, Vol. II, pp. 26-27.

the maxims of Roman law, permitted divorce by mutual consent and for a variety of causes. It thus appears that for several centuries little change was made in civil legislation and the ecclesiastical theory of indissolubility was practically ignored.

From the fifth to the sixteenth century we witness the long struggle of the Church to conform her own practices to her theories. The difficulties were increased as the result of the spread of Christianity among the Teutonic nations of the West, where, as we have seen, a wide variety of customs existed. While the Church adhered in theory to the logical doctrine of indissolubility and while the Canon Law, through a long list of councils, developed consistently with this view, it was impossible to enforce so rigid an interpretation and compromise was inevitable.

This compromise took two forms. In order to meet certain pressing needs there was devised a special form of limited divorce, namely, *divortium a mensa et thoro*, or divorce from bed and board. Thus ecclesiastical sanction was obtained for judicial separation which left the sacrament untouched since it did not dissolve the marriage bond. The causes for which this form of divorce was allowed, as finally settled in the Canon Law, were: adultery, "spiritual adultery," and cruelty. The practical interpretation of these causes, however, extended widely the grounds of separation.

But this procedure did not solve the main difficulty; it did not undo the sacrament and consequently the remarriage of either party was prohibited strictly. By force of circumstances the Church was compelled to meet this situation.

Again scholastic reasoning came to the rescue. If logically marriage, once performed as a sacrament, could not be revoked, it could be annulled if it could be discovered that the conditions essential to a valid sacrament had not existed at the time. Professor Howard says: "Little by little the canonists, in tedious succession from Hincmar

of Rheims to the decretalist Tancred, brought order out of confusion and agreement out of contradiction. Through special pleading and violent assumption, unscrupulous twisting and suppressing of texts, earnest argument and childish allegory, the law of divorce was brought into some degree of harmony with the sacramental theory of marriage. The middle of the tenth century saw the task virtually accomplished at the hands of Gratian and Peter Lombard."¹

Miss Messer says: "Ideally and on paper marriage was an indissoluble and lifelong union, whereas in reality it was an easily and continually evaded contract, with the result that the family of the Middle Ages was hardly more stable than it is today, although it was by a different set of devices in this period that human nature achieved its will. Outright divorce, admitting of the remarriage of either party was utterly forbidden, as it is still forbidden in the Roman Catholic Church today; but an indissoluble union was not thereby established, for there developed at least fourteen cases in which a marriage once contracted could be declared null and void . . .

"Among these 'diriment impediments' constituted by the Church and empowering it to dissolve a marriage absolutely were impuberty, impotency, disparity of worship, defect of consent, consanguinity, affinity and spiritual relationship."²

President Charles F. Thwing states the matter thus: "While denying the right of divorce, the Church nevertheless reserved for itself the right of pronouncing certain marriages null and void from the beginning. The canons prescribing the prohibited degrees of relationship were marvels of ingenuity. Spiritual relationships, those gained in baptism, were recognized no less than natural relationships, and equally with them served as barriers to legal

¹ *Ibid.*, Vol. II, pp. 51-52.

² *Op. cit.*, pp. 167-168.

marriage. Marriage was prohibited within seven degrees of relationship and affinity; and none but the astutest students of the law were able to unravel so complicated a system. The annulling of marriages, which had been contracted within the prohibited degrees, became a flourishing business of the Church. No exercise of its power yielded more money, or caused more scandal. So tangled was the causistry respecting marriage, at the beginning of the sixteenth century, that it might be said that, for a sufficient consideration, a canonical flaw could be found in almost any marriage."¹

In concluding this section we quote once more from Professor Howard: "The Council of Trent introduced no essential change in the divorce law of the Catholic Church. A vain attempt was made to remedy the evils arising in the confusion of terms. Anathema was pronounced against those who should deny the indissolubility of wedlock as a necessary consequence of its sacramental nature; and a like curse was fulminated against any who shall dare to say that the church errs in allowing divorce *quoad torum et cohabitationem*, temporarily or perpetually, for any cause beside unfaithfulness. But neither at the council nor since has there ever been made any essential change in the law relating to the papal power of dispensation."²

Effects of the Protestant Reformation

Reaction against the sacramental theory of marriage and the control of the Church was a natural consequence of the Protestant Reformation, and in this regard it was Martin Luther's conception of women and marriage that was determinative in the formation of Protestant thought.

We have pointed out elsewhere³ the significance of Luther's approach to the subject. In his debate with Eck

¹ *The Family*, rev. ed., pp. 112-113.

² *Op. cit.*, Vol. II, pp. 59-60.

³ LICHTENBERGER, JAMES P., *Development of Social Theory*, p. 162.

in Leipsig in 1519, instead of relying upon the scholastic method of logical reasoning he reviewed the historic development of canonical doctrines and showed the processes and conditions under which they had been formed. Thus without realizing the importance of this revolutionary procedure he became, nevertheless, the pioneer in applying the method of historical criticism to social institutions. This principle of interpretation he applied to marriage, which he found to be a normal human institution, and thus the dogma of the sacramental character of marriage which was the product of a long series of ecclesiastical decrees he repudiated as a priestly invention and the exclusive control of the Church as an unwarranted usurpation. His violent antagonism against ecclesiastical domination doubtless colored his views, but he did not hold the ascetic attitude toward sex relations nor did he share the consequent medieval misogyny. Marriage he considered pure and the normal relation of men and women. Natural impulses, he held, were divinely implanted in the interest of race perpetuation and their legitimate exercise a social duty. Thus he defended the doctrine of the civil character of marriage. He says: "Since weddings and matrimony are a temporal business it becomes us clerks and servants of the Church to order or rule nothing therein, but to leave to each city and state its own usages and customs in this regard." Elsewhere, in words which anticipate the sentiments of Milton by a hundred years, he insists that "matrimonial questions do not touch the conscience, but belong to the temporal power" warning the clergy not to meddle with them unless commanded by the authority. Marriage, he emphatically declares, is a "temporal, worldly thing" which "does not concern the church."¹

According to Professor Howard there were two practical considerations which strengthened Luther's position:

¹ HOWARD, *op. cit.*, Vol. I, pp. 387-388.

"First, the evils growing out of the ecclesiastical jurisdiction in matrimonial causes were becoming an intolerable burden to Christendom; and only by denying the sacramental nature of marriage could the way be cleared for a transfer of that jurisdiction to the secular courts. Secondly, the abuses connected with sacerdotal celibacy were scarcely less threatening. The licentiousness of the clergy was 'beyond belief.' Many 'bishops' were at last content to convert the vows of celibacy into sources of revenue, suffering the clergy to live in concubinage in return for a yearly tax; and yet the ill preserved chastity of the priesthood was interpenetrated, then as before, by a profound contempt for the marriage state.' Hence Luther proclaimed the natural and scriptural right of priests to marry; and, rejecting the low ascetic ideal, he laid stress on the purity and holiness of marriage as an institution ordained in heaven."¹

Consistent with this view, Luther, "on October 9, 1524, threw aside his monk's cowl, and on June 13, 1525 he married Catherine von Bara and established a home life characterized by sincere affection and renowned hospitality."²

Notwithstanding the concise and emphatic position taken by Luther in regard to marriage, so deeply ingrained were the traditional ideas, that he did not wholly escape their influence either in concept or in terminology. So high was his estimate of the character of marriage that he refers to it figuratively as a sacrament: "An external holy symbol of the greatest, holiest, worthiest, noblest thing that has ever been or can be; the union of the divine and human nature in Christ."³ Nor does he wholly escape the ascetic influence in respect to marriage. For while better reasons for marriage were assigned, the ascetic idea inheres, though given a subordinate place. His idea of marriage is

¹ *Ibid.*, Vol. I, pp. 388-389.

² LICHTENBERGER, *op. cit.*, p. 159.

³ STRAMPPF, HEINRICH LEOPOLD VON, *Dr. Luther, Ueber die Ehe*, p. 205.

expressed in a triad as follows: "1. The design of marriage is the begetting of children for the increasing of the race: in this lies the beginning and cause of life. 2. Further, the design of marriage is the bringing-up of children in the fear of God and to fit them to exercise ecclesiastical and worldly power. 3. Finally, marriage is offered by God as a remedy against sinful desire and lust."¹ It is apparent here that the loftier ideals of romantic affection associated with marriage in later times had not yet come to be appreciated by the great reformer.

Professor Howard sums up the total influence of the Reformation in respect to marriage as follows:

"Thus the changes effected by the religious revolution in the conception of marriage, highly important as it was from a speculative point of view, was not destined to bear its proper fruit until after many days. In Germany, after a time, the bolder and more liberal teachings of Luther were generally ignored; so that by the middle of the seventeenth century the reactionary theories which had then gained ascendancy were substantially in harmony with the ideas of the English clergy. In both countries the ecclesiastical courts still continued to try matrimonial cases in the spirit of the canon law; and more and more, as the new churches grew in power and became conservative, did the theological view of the nature of marriage approach the ancient dogma. According to the canon law the church claimed matrimonial jurisdiction because marriage was a sacrament; by the Protestants, marriage was made almost a sacrament because the church exercised matrimonial jurisdiction. Not until the full triumph of civil marriage in the nineteenth century were the logical results of the new doctrines at last attained."²

¹ STRAMPFF, *ibid.*, p. 3.

² *Op cit.*, Vol. I, p. 399.

The Civil-contract Theory

Definite progress was made in the direction of civil marriage when the reformers directed their attacks not only against the nature of marriage as a sacrament but against ecclesiastical jurisdiction in matrimonial affairs on the ground that they were purely temporal matters. But it was not in Germany that civil-contract marriage first gained the ascendancy. This distinction apparently goes to Holland, where, in 1580 a permissive civil-contract form was established. It was in England, however, that the first obligatory form arose. Tendencies in this direction were strengthened in England by a large and growing faction which favored the complete separation of Church and State, as well as by the Puritans and Independents in their opposition to the Romanizing party in the Established Church. Events here culminated in "Cromwell's Triumph"—the Civil-Marriage Act of 1653. This act is of unusual significance because it constitutes the basis, not only of the future matrimonial laws of England, but of Western civilization in general: From this Act we may date the modern era of civil-contract marriage, although its complete recognition was not accomplished anywhere before the days of the French Revolution.

Three things were clearly established. (1) The sphere of matrimonial jurisdiction was defined, (2) conditions of marriage and the form of ceremony were established, (3) the machinery of administration was determined. Jurisdiction was vested in civil tribunals and a civil ceremony was required in all cases of valid marriage. The ceremony established the doctrine of mutual consent and was performed by a justice of the peace after due publication of bans. The wording of the ceremony, however, was of a religious character. The whole subject of administration as regards controversies, lawfulness, and unlawfulness was placed in the hands of justices of the peace and local judges. This act, providing as it did for

jurisdiction, registration, publication, and every civil function in reference to marriage, was declared to be "good and effective in law; and no other marriage whatsoever within the Commonwealth, after September 29, 1653, shall be held or accepted a marriage according to the Laws of England."¹ This law was amended, however, in 1656 and 1658 in order to permit the use of "accustomed religious rites" in the ceremony in case the parties so preferred. The outstanding achievement of this law was that it placed matrimonial jurisdiction in the hands of civil, instead of spiritual, tribunals and asserted unequivocally the secular nature of marriage.

It is somewhat peculiar, however, that neither in this measure nor in any other during the Commonwealth was the jurisdiction in cases of divorce defined, or any provision made for the trial of such cases—a condition due probably to the survival of strong religious prejudices against divorce among the Independents.

While this Civil-Marriage Act was not repealed it was rendered inoperative, almost at once, as a result of the political changes which occurred in the subversion of the Commonwealth, and was not revived for exactly a century. The famous Hardwick Act of 1753 imperfectly reestablished civil marriages, and its chief defects, due in the main to religious intolerance, were remedied in the Civil-Marriage Law of 1836.

But the clergy still continued to exercise jurisdiction over matrimonial causes through ecclesiastical courts and denied the right to divorce on the theory of the Canon Law. It was not until the year 1857 that a Divorce Act transferred jurisdiction to the civil tribunals and established the right to divorce on the usual grounds.²

Civil marriage in France is a product of the Revolution. The Constitution of Sept. 3, 1791 declares in Article 7

¹ HOWARD, *op. cit.*, Vol. I, p. 419.

² Cf. MESSER, *op. cit.*, p. 325.

(tit. II): "The law considers marriage only as a civil contract. The legislative power will establish for all the inhabitants, without distinction, the mode by which births, marriages and deaths will be ascertained, and will designate the public officers to receive the records."¹

In the United States, from Colonial days, the civil-contract concept of marriage has prevailed and matrimonial jurisdiction has rested within the domain of the civil law. Commenting on the marriage situation in New England, Professor Howard says: "The conception of wedlock which existed there from the beginning was identical with that which later found expression in the writings of Milton and the legislation of Cromwell. Marriage was declared to be, not a sacrament, but a civil contract in which the intervention of a priest was unnecessary and out of place . . . The early Colonial laws, generally, required that all marriages should be celebrated before a justice of the peace or other magistrate, sometimes under penalty of nullity for those solemnized in any other way . . . Everywhere marriage was regarded as a civil contract and the celebration was performed by a civil magistrate . . . Gradually, however, the stern Puritanism of the Colonists became softened; the prejudice against ecclesiastical rites rapidly subsided; marriages were solemnized even by the Congregational clergy, and soon after the struggle for charters, laws were enacted allowing the ministers of all denominations to perform the ceremony,"² that is, clergymen were constituted civil officers for this purpose.

It can scarcely be doubted that American ideas were influenced greatly by the institution of civil marriage in Holland as had been the case in the experimental legislation of Oliver Cromwell and the Commonwealth.

It is a notable fact that the nineteenth century witnessed the establishment of the civil-contract theory of marriage

¹ GLASSON, ERNEST D., *Le mariage civil et le divorce*, p. 253.

² *Op. cit.*, Vol. II, pp. 127-138.

throughout practically the whole of Western civilization and that civil jurisdiction has replaced the ecclesiastical.

The Present Status

The inevitable effect of this transition upon the theory and practice of divorce may now be stated in a few sentences. With the passing of the belief in the sacramental nature of marriage in all Protestant countries, and the general establishment of civil-contract marriage throughout modern civilization, the doctrine of the indissolubility of marriage was destined to decline, together with the era of ecclesiastical domination.

It is not to be supposed, however, that this change was to be effected at once. The forces of religious conservatism are far too powerful for that. The traditional idea of the inherent sanctity of marriage, long after the theory of the sacrament was abandoned, exerted, and still exerts, a profound influence upon secular divorce customs and legislation. Even Luther who, more than any other individual, shaped the thought of the Reformation in respect to marriage and divorce, was, at first, as we know, influenced by his emotional attitude toward the sacredness of marriage and was much more conservative than some of his contemporaries and successors. Reactionary tendencies both on the Continent and in England for a time held the ascendancy, and the writings of reformers such as Zwingli, Bucer, Bullinger, and even the masterful arguments of John Milton were powerless to produce any radical results; the ancient doctrine of indissolubility was too deeply rooted in the public conscience to be easily displaced. Although marriage had become a civil contract it did not for a time become less binding. For more than two centuries the law of divorce remained practically undisturbed by the intellectual and legal changes which society was undergoing.

But the principle involved in the theory of the civil contract was destined eventually to produce certain inevitable results. With the general acceptance of this principle in our modern world we are witnessing the extension of secular control over the entire domain of domestic institutions. Thus marriage is becoming again, as formerly, to be regarded as a normal human relation resting upon the basis of individual and social expediency and utility, entered into and perpetuated according to the prescriptions of the civil code. Furthermore, in the event that specific marriages fail of their purpose and become in fact dissolved, legal divorce is the logical outcome, for the law can by due process sever a bond which it has created.

Moreover, civil society as organized in the State in reality has assumed its competency to deal with these subjects which have as their end the promotion of human happiness and well-being and has arrogated to itself the right to legislate in this behalf. The Church on the other hand retains its original and legitimate function of fostering ethical ideals in respect to marriage and divorce, as in all other important human relations, and even of advocating appropriate civil legislation in harmony with its standards.

This, it appears, is not only the actual but the logical division of functions under the régime of the civil contract. But there are still abundant evidences of the survival of traditional ideas and attitudes which tend to thwart a harmonious readjustment in the new order. Many persons regard it as unfortunate that the Church has wasted so much of its energy in a vain and impotent protest against the secular trend, which is characteristic here as in every other aspect of our modern life, at a time when constructive guidance of social experimentation has been so badly needed, and when such assistance might have yielded more substantial results.

CHAPTER FIVE

THE TREND OF DIVORCE IN THE UNITED STATES

SOURCES

BY ACT OF CONGRESS APPROVED MARCH 3, 1887 THE commissioner of labor was authorized "To collect and report to Congress the statistics of and relating to marriage and divorce in the several States and Territories and in the District of Columbia."¹ This report, prepared by Hon. Carroll D. Wright, commissioner of labor, covered toperiod of twenty years, 1867-1886, and was submitted a Congress in February, 1889.

A joint resolution of Congress, approved February 9, 1905, authorized the director of the census "To collect and publish the statistics of, and relating to, marriage and divorce in the several States and Territories and in the District of Columbia since Jan. 1, 1887."² This second report was transmitted to Congress in two parts. Part I, containing Summary, Laws, and Foreign Statistics, was not completed until September, 1909, while Part II, containing the General Tables was submitted in October of the year previous. The Statistical Text and Summary Tables in Chapter I, Part I, were prepared by Mr. Lewis Meriam, acting chief of the division of revision and results, and were based largely upon a preliminary bulletin on marriage and divorce (*Bulletin* 96) which had been transmitted to Congress in December 1908, and which had been prepared by Dr. Joseph A. Hill, the chief of that division. Since the first report was out of print, the second report embodied much of the material contained in the first, and is virtually a report for the period 1867 to 1906.

¹ *Report of the Commissioner of Labor on Marriage and Divorce*, 1889, pp. 12-13.

² *Special Report of the Census Office on Marriage and Divorce*, 1908-1909, Part II, p. ix.

Nothing was done for another decade, but Congress made available in July 1917 an amount of money sufficient to cover the cost of a complete census of marriage and divorce for the ten-year period 1907-1916. Because of war conditions it was decided, however, to confine the survey to the single year 1916 and at some future time perhaps to complete the survey for the intervening years. It also was agreed that the report of 1916 should constitute the beginning of a series of annual reports for the future which would make available constantly, instead of after long intervals, as had been the case previously, the marriage and divorce statistics. The report for 1916 was prepared under the direction of Mr. Samuel L. Rogers, director of the census, and under the immediate supervision of Mr. William C. Hunt, chief statistician for population, and was transmitted to Congress in October, 1918.

The expectation in regard to consecutive annual reports was frustrated by the participation of the United States in the World War. The reports were resumed, however, in 1922 and have been continued for each year since that time. The last one at the date of this writing, is for the year 1929. Since 1922 they have been submitted by Mr. W. M. Steuart, now director of the census, and from 1924-1926 supervised by Mr. Leon E. Truesdell, chief statistician for population. The 1927, 1928, and 1929 reports were supervised by Mr. Starke M. Grogan, chief statistician for statistics for States and cities, and Mr. Lemuel A. Caruthers, expert chief of division.

Marriage statistics in the first report were declared by Dr. Wright himself to be "thoroughly incomplete and unsatisfactory."¹ Unlike divorce statistics, which are compiled from court records, marriage statistics must be obtained from published State reports, through State boards of health, from county clerks or other registration officials. In the first report marriage statistics were obtained

¹ Report of 1889, p. 18.

for only 1,728 counties out of a total of 2,627. The second report had imperfect returns for only 164 counties out of a total of 2,803, exclusive of South Carolina, where no marriages were recorded, while for only 28 counties are the returns entirely lacking. By the simple method of deducting the incomplete figures of marriages in the 164 counties from the total marriages, and the combined population of the 192 counties from the total population, we have a fairly accurate basis for computing rates.¹ In the report of 1916 in which the information was obtained through correspondence, as has been the case in all subsequent annual reports, no information was obtained from 106 counties out of a total of 2,980. These counties were mostly in Southern States in which the number of marriages was not large and may be disregarded as statistically negligible. Since 1922 the marriage returns are "ostensibly complete."

Divorce statistics, in which we are especially interested, in both twenty-year investigations, were obtained by a careful examination by census enumerators of the records in the counties granting divorces and are complete, except in the cases of those counties in which the records have been destroyed, either partially or totally, by fire or other cause. In the first report they were given for over 95 per cent of the whole number of counties and these cover the facts for over 98 per cent of the whole population of the country, while for the second, they were lacking for only six counties and were incomplete for only a few others. "It is believed, however," the second report declares, "that in neither investigation were those omissions sufficiently serious as to destroy the value of the figures for the United States or for any of the states or territories."²

The report for the year 1916 was more deficient than the report for the twenty-year period 1887-1906. This is accounted for, first, by the fact that the statistics were

¹ Report of 1908-1909, Part I, p. 8.

² *Ibid.*, Part I, p. 11.

collected for the first time wholly by correspondence, and second, because the abnormal conditions due to the war and to the administration of the selective-service law which considerably delayed the collecting of the divorce schedules, so that many of the reports were not in when the files were closed. No returns were received from 95 counties scattered in 22 States, seven-tenths of which were from eight Southern States. These omissions were not regarded, however, as sufficient to vitiate the report.¹

Beginning in 1922 and continuing for each of the annual reports up to 1929 the returns have been complete for each county in the United States.

We are now in possession of marriage and divorce statistics for continental United States for a consecutive period of 43 years, 1887-1929, in the case of the former, and for a period of 63 years, 1867-1929, in the case of the latter.

Our study, except for purposes of comparison, is confined to a survey of the statistics of divorce.

The Divorce Trend

The important fact for the student of social science, is not the number of divorces granted in any given year or in any particular State, but the trend which a comparative study reveals. Absolute numbers are meaningless except as they are means for computing rates or in revealing trends. It is our purpose in this chapter, therefore, not to present detailed tabulations of divorce statistics beyond what is necessary for purposes of comparison, but to examine the changes that have taken place in order to determine the nature and the rapidity of the movement in general, and of some of the trends in particular, that are exhibited by these changes in the period covered by the Federal reports.

The annual numbers of divorces granted in the United States from 1867 to 1929 show an unbroken series of increases with but four exceptions. It should be noted,

¹ Cf. Report of 1916, pp. 11-12.

however, that the returns for the years not covered by the various reports are estimates of the Census Bureau. The figures are:¹

TABLE I.—NUMBER OF DIVORCES GRANTED IN THE UNITED STATES 1867-1929

Year	Divorces		Year	Divorces	
	Total number	Increase over preceding year		Total number	Increase over preceding year
1929	201,468	5,529	1897	44,699	1,762
1928	195,939	3,902	1896	42,937	2,550
1927	192,037	11,184	1895	40,387	2,819
1926	180,853	5,354	1894	37,568	100
1925	175,499	4,547	1893	37,468	889
1924	170,952	5,856	1892	36,579	1,039
1923	165,096	16,281	1891	35,540	2,079
1922	148,815	10,765*	1890	33,461	1,726
1921	159,580†	10,925*	1889	31,735	3,066
1920	170,505†	28,978	1888	28,669	750
1919	141,527†	25,273	1887	27,919	2,384
1918	116,254†	5,310*	1886	25,535	2,063
1917	121,564†	7,564	1885	23,472	478
1916	114,000	9,702	1884	22,994	204*
1915	104,298†	3,714	1883	23,198	1,086
1914	100,584†	9,277	1882	22,112	1,350
1913	91,307†	6,989	1881	20,762	1,099
1912	94,318†	5,099	1880	19,663	2,580
1911	89,219†	6,174	1879	17,083	994
1910	83,045†	3,374	1878	16,089	402
1909	79,671†	2,819	1877	15,687	887
1908	76,852†	281	1876	14,800	588
1907	76,571†	4,509	1875	14,212	223
1906	72,062	4,086	1874	13,989	833
1905	67,976	1,777	1873	13,156	766
1904	66,199	1,274	1872	12,390	804
1903	64,925	3,445	1871	11,586	624
1902	61,480	496	1870	10,962	23
1901	60,984	5,233	1869	10,939	789
1900	55,751	4,314	1868	10,150	213
1899	51,437	3,588	1867	9,937	
1898	47,849	3,150			

* Decrease.

† Estimated by Census Bureau.

¹ Report of 1908-1909, Part I, p. 12, and Report of 1929, p. 15.

During this period of 63 years, 1867-1929, a total of 4,324,245 divorces were granted in continental United States. There were 9,937 granted in 1867 and 201,468 in 1929. A better grasp of the trend is afforded if the figures are grouped in five-, ten-, and twenty-year periods as follows:

TABLE II.—DIVORCES BY FIVE-, TEN-, AND TWENTY-YEAR PERIODS

1922-1926.....	841,165	}	1,550,595
1917-1921.....	709,430		
1912-1916.....	504,507	}	909,865
1907-1911.....	405,358		
1902-1906.....	332,642	}	593,362
1897-1901.....	260,720		
1892-1896.....	194,939	}	352,263
1887-1891.....	157,324		
1882-1896.....	117,311	}	206,595
1877-1881.....	89,284		
1872-1876.....	68,547	}	122,121
1867-1871.....	53,574		
			2,460,460
			945,625
			328,716

From these figures it is perceived readily that the increase in the number of divorces is both persistent and rapid. The number of divorces enumerated in the second twenty-year period is almost three times that of the first, that of the third again is nearly three times that of the second, while nearly twenty times as many divorces were granted in 1926 as there were in 1867. This increase because of its constancy and its regularity constitutes what often is referred to as the divorce trend or movement.

Significance of the Trend

The divorce rate is the most significant index we have of marriage instability. It is a fair measure of the amount of marriage dissolution which is legally sanctioned. It is by no mean, however, a complete or satisfactory index, and cannot be accepted as such, in view of certain facts which must be observed.

Divorce, as we have noted, is not synonymous with marriage breakdown. It is, on the contrary, merely the legal recognition of the fact that the marriage relation ended at some time in the past. A divorce cannot be secured unless and until this fact has been established. Many married persons have terminated their marital relations in fact but have felt content to live apart without obtaining a divorce. Everyone knows of married couples not living together and with no present intention of being divorced. They may have shunned the divorce court because of the trouble or expense involved, because of moral scruples, or for fear of incurring social disapproval. People often are timid about advertising their domestic troubles to their friends and acquaintances for social or business reasons and hence avoid the publicity, not to say scandal, sometimes involved in divorce procedure. The public submission of the type of evidence necessary to secure divorce often serves as a deterrent with persons of sensitive nature.

It frequently is remarked that "Desertion is the poor man's divorce." While desertion or abandonment for a specified period is a legal ground for divorce in every state except New York, the District of Columbia, and South Carolina, and while it constitutes one of the most frequently used grounds for divorce in the whole United States, nevertheless very many persons, particularly among the poor, end their marriages without ever obtaining legal sanction. After enumerating certain reasons why those in "the higher social circles" may prefer legal divorce,

Professor Earl E. Eubank explains: "The poorer classes . . . carry their troubles to the divorce court less frequently. First of all, the expense is well nigh prohibitive for the very poor. Second, the prohibition of the Roman Catholic Church is particularly influential among the masses of poor in cities, who, owing largely to European parentage, are predominantly Catholic. Third, there is among those classes, particularly among the immigrants, an ignorance of the procedure necessary to secure divorce, coupled with a suspicion of courts and officers, which keeps them from resorting to the law.

"On the other hand, desertion brings about the desired results just as effectively; and its inexpensiveness and the ease with which it may be accomplished under all conditions, recommend it. Neither does desertion carry with it the finality that characterizes divorce and legal separation. It permits the deserter, should he desire to do so, to return to his family. Finally, among the poorer classes, especially among the immigrant populations of great cities, no social stigma attaches to the man who leaves his family."¹

For these and many other reasons it is quite probable that marriage dissolution actually is much greater at any particular time or place than the divorce statistics reveal.

From a different point of view it may be shown that an increasing divorce rate may not indicate at all that infelicity in marriage is also on the increase. Indeed it might be quite otherwise. It may indicate merely a change in the marriage *mores* of the group. It very likely would be an assumption contrary to the facts if, because divorces were less frequent fifty or a hundred years ago, we should conclude that domestic discord was correspondingly less. It may mean nothing more than that there has been a change in attitudes toward divorce; or an increase in divorce facilities; or a lessening of social disapproval. Persons may be freer to seek divorce without incurring social censure or oppro-

¹ *A Study of Family Desertion*, p. 19.

brium. If such were the case, as indeed it seems to be, then the divorce rate would rise without any change in marriage conditions; that is, in any given number of maladjusted marriages, a larger proportion than formerly may solve their problems by divorce. In that case a rising divorce rate would not indicate a like increase in marital unhappiness. If, for example, the State of South Carolina, which now does not permit divorces for any cause, should enact a law permitting them, and a considerable number of persons should proceed immediately to secure divorces, it would not indicate a sudden increase in marriage infelicity in that State.

A much more extensive investigation of all the factors involved is necessary, therefore, before we can comprehend the real meaning of the divorce trend.

Comparison with Foreign Countries

Considerable interest attaches to the comparison of divorce statistics in the United States with those of other countries. Two aspects of the problem are considered most frequently, first, the comparative volume of divorce in America as compared with the rest of the world, and second, the comparative rates between the United States and other countries. In considering these phenomena a difficulty is encountered because of the fact that foreign statistics often are not comparable with ours, either because of the insufficiency of data or because of a lack of correspondence between the periods or years for which data are available. The first and second divorce reports, however, presented a survey of foreign statistics which made possible certain comparisons within a reasonable degree of probability. Professor Walter F. Willcox in a summation of the material of the first report¹ on the question of the relative volume of divorce presents the following table:

¹ *The Divorce Problem, A Study in Statistics*, p. 12.

TABLE III.—DIVORCES IN THE CHRISTIAN WORLD IN 1885

Country	Number	Country	Number
Canada.....	12	Germany.....	6,161
Great Britain and Ireland...	508	Austria.....	1,718
France.....	6,245	Rumania.....	541
Italy.....	556	Russia.....	1,789
Switzerland.....	920	Australia.....	100
Belgium.....	290		
Holland.....	339	Total.....	20,111
Denmark.....	635	United States.....	23,472
Norway.....	68		
Sweden.....	229	Excess.....	3,361

This table was constructed from the statistics of the various countries or from estimates based on other available data. Commenting on the table Professor Willcox says: "It is very doubtful whether the number of divorces and separations in Spain, Portugal, Greece, Mexico, Central America and South America, all told, would equal this excess of over 3,300. But in the absence of direct evidence the reader must form his own opinion on that point from an examination of the table. So far as statistics are published we may safely go, and conclude that the number of divorces in the United States is considerably in excess of the number reported from all the rest of the Christian World."¹

On the basis of the statistics published by the same countries for the dates most nearly corresponding with 1920 and estimates from others in which the figures are not accessible, it seems probable that the totals for that year do not exceed 95,000 while the number of divorces granted in the United States is placed at 170,505.

In order to show the trend in the United States in comparison with that in foreign countries the following table is arranged from the statistics published in the census report of 1889-1906 supplemented by other available

¹ *Ibid.*, p. 12.

sources for later dates. The annual reports of 1916, and later, furnish no data on this subject.

TABLE IV.—DIVORCES PER 100,000 POPULATION

Country	1920	1910	1900	1890	1880	1870
United States	139	92	73	53	38	29
Japan	94	113	143	269		
France	71	37	25	17		
Germany	63	24	15	13		
Switzerland	51	43	32	30	33	
Belgium	49	14	11	6	3	1
Denmark	42	27	17	...	20	18
New Zealand	38	...	12	3		
Holland	29	16	10	8	4	3
Sweden	21	11	8	6	5	3
Australia	19	12	10	6		
England and Wales	17	3	2	1	1	1

It should be understood that this table presents only a relative degree of accuracy. The dates in some instances for which figures are given do not coincide with the decennial dates but are their nearest approximation. Again in some cases the figures are three- or five-year averages while in others they are for the year given. It is believed, however, that none of these discrepancies are sufficiently great to invalidate the table for the purpose for which it is offered.

As presented, the fact seems to be established that the divorce rate is higher in the United States than in any other country; that while the general trend in the various countries has been upward it has risen faster here than elsewhere. Two exceptions, however, should be noted. The figures for Japan show a marked decline. This is explained by the influence of the code of 1897 which made divorces much more difficult to obtain than formerly. Again it will be noted that in several countries there was a remarkable increase between 1910 and 1920. This is assumed to be

rather an index of the disturbed conditions during and following the World War, a conclusion which seems warranted by the trend in some of the countries since 1920.

So much for the facts. What is their significance? The popular interpretation is to the effect that the difference between the volume and also the higher rate of divorces when compared with other countries indicates a higher degree of family disorganization in the United States. This may or may not be the case. On the face of the returns it seems likely that it is true, but the figures themselves do not furnish conclusive proof.

There are wide ranges of difference among countries in the strength and potency of family feeling to subdue the otherwise recalcitrant emotions; in the mutuality of relations between husband and wife or the survival of patriarchal domination of the husband over wife and children and his ultimate authority in the home; in the traditions as to the permanency or indissolubility of marriage regardless of incidents; in the actual or potential economic independence of women; in the expectation as to the ends or purposes served by marriage; in the importance attached to the romantic element in marriage; in the methods of solving physical or mental incompatibility through tolerated extra-marital relations; and a host of other reasons, which make precarious any conclusions concerning the relative amount of marriage disaffection that is based merely or exclusively upon a difference in divorce rates. A low divorce rate is no absolute ground of assurance that marriage conditions are ideal.

Thus far we have discussed merely the general nature of the divorce trend. The rate of divorce we have been studying is that based upon the aggregate number of divorces granted within the jurisdiction of continental United States. No account has been taken of the variations of the rate under pressure of local conditions. It is necessary now to examine some of the incidents of this general

movement in order to grasp more adequately its real nature and significance.

Variations of the Trend

No effort is made to exhibit in detail all the variations of the general trend. Merely the chief features of the most characteristic and important ones will be presented for the purpose of obtaining a more intelligent view of the total situation. This will enable us better to analyze the causes which underlie the movement as well as to discover the chief reasons and the meaning of the variations in particular.

Geographic Distribution

For purposes of comparative study the Census Bureau has divided the United States into nine as nearly homogeneous geographic divisions as possible. They are:

New England—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

Middle Atlantic—New York, New Jersey, and Pennsylvania.

East North Central—Ohio, Indiana, Illinois, Michigan, and Wisconsin.

West North Central—Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

South Atlantic—Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.

East South Central—Kentucky, Tennessee, Alabama, and Mississippi.

West South Central—Arkansas, Louisiana, Oklahoma and Texas.

Mountain—Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada.

Pacific—Washington, Oregon, and California.

Among these various geographic divisions there is, and has been from the first, as wide diversity in their respective divorce rates, as those between the United States and foreign countries. The following table displays the varying rates.

TABLE V.—DIVORCES PER 1,000 OF THE TOTAL POPULATION BY GEOGRAPHIC DIVISIONS¹

Division	1929	1926	1922	1916	1906	1900	1890	1880	1870
<i>United States</i>	1.66	1.54	1.35	1.12	0.84	0.73	0.53	0.38	0.29
New England	0.97	0.92	0.94	0.80	0.65	0.67	0.55	0.53	0.49
Middle Atlantic	0.62	0.61	0.57	0.43	0.32	0.28	0.22	0.18	0.16
East North Central	2.15	1.98	1.69	1.47	1.12	1.00	0.73	0.60	0.48
West North Central	1.83	1.75	1.68	1.32	1.03	0.91	0.67	0.45	0.31
South Atlantic	0.98	0.95	0.76	0.59	0.43	0.33	0.21	0.13	0.08
East South Central	1.68	1.66	1.42	1.16	1.03	0.80	0.56	0.33	0.15
West South Central	2.80	2.57	2.23	1.74	1.31	1.12	0.69	0.39	0.17
Mountain	3.01	2.18	2.09	1.88	1.35	1.29	1.22	0.95	0.58
Pacific	2.84	2.86	2.33	2.10	1.54	1.29	0.93	0.85	0.57

¹ For the years 1870-1900 the figures are annual averages for the five-year periods of which the census year is the median year. For the years 1906-1929 the figures are for the years given.

Certain facts are so obvious from a casual glance at the table as scarcely to need pointing out. There is a constant increase in the divorce rate for the entire period, both for the United States as a unit, and for each of the several divisions, but in different degrees, except the Pacific, which decreased slightly in 1929. The New England division increased least rapidly and the Mountain most rapidly. The three Atlantic coast divisions have the lowest rates, with the Middle Atlantic at the bottom. There is a rapid mounting of the rates as we go west till we reach the Mountain division which is the highest of all. The East South Central and the West North Central divisions are the most typical of the country since their rates correspond most nearly with those of the United States as a whole.

When we turn to the individual States we find even greater extremes of variation in their rates than in those of the geographic divisions. They range between the two extremes of 0.00 per 1,000 in the total population of South Carolina and 28.13 in Nevada in 1929.

Following is a table showing the rates in all the States in the order of frequency:

TABLE VI.—DIVORCE RATE PER 1,000 POPULATION IN THE STATES, 1929, IN ORDER OF FREQUENCY¹

State	Rate	State	Rate
Nevada	28.13	Maine	1.59
Oklahoma	3.48	Mississippi	1.58
Oregon	3.38	New Hampshire	1.49
Texas	3.20	Alabama	1.37
Wyoming	3.15	Maryland	1.30
Washington	2.90	Virginia	1.27
Montana	2.77	Nebraska	1.26
California	2.74	West Virginia	1.17
Missouri	2.72	South Dakota	1.13
Arkansas	2.67	Vermont	1.13
Florida	2.64	Minnesota	1.12
Indiana	2.54	Rhode Island	1.10
Arizona	2.53	Louisiana	1.04
Michigan	2.52	Wisconsin	0.92
Colorado	2.33	Georgia	0.84
Idaho	2.33	Massachusetts	0.84
Ohio	2.33	North Dakota	0.83
Kansas	2.20	Pennsylvania	0.82
Illinois	2.09	Connecticut	0.77
Utah	2.01	New Jersey	0.75
Tennessee	2.00	Delaware	0.73
New Mexico	1.91	North Carolina	0.55
Iowa	1.79	New York	0.41
Kentucky	1.77	District of Columbia	0.24
United States	1.66	South Carolina	0.00

¹ Report of 1929, p. 17.

Much interest has centered in the interpretation of these differences both among the divisions and among the States

and many efforts have been made to explain them, but with inconclusive results. Were the data available, we believe it would be possible to explain the variations in the various localities, but in the absence of such detailed information we must confine our expositions to the distribution in the larger areas where minute differences are lost in the aggregate—and this with some considerable degree of uncertainty.

In a country such as ours where such varied economic, social, and religious conditions exist, it is to be expected that wide variations in the divorce rates would be found. The situation is further complicated by such elements as the extreme mobility of population, interstate migration, the unequal distribution of diverse ethnic stocks, and the like.

At the outset the same observations should be made here as those with reference to the differences between the rates in the United States and in foreign countries. It is quite possible that matrimonial ills in a geographic division or State showing a low divorce rate may be greater than in one with a higher rate, if in the former the attitude toward divorce is more conservative, or the reverse may be true. The abnormally high rate, for example, in Nevada is no index whatever of the marital situation in the State, but reflects the result of migratory divorces due to more liberal provisions, while the total absence of divorces in South Carolina in no way reveals the situation in regard to marriage. It may be better or worse than in other States.

It has been suggested that a difference in the marriage rates due to differences in age groupings or similar factors may be at least a partial explanation. But a parallel arrangement of the several geographic divisions on the basis of the rate of divorce in the total population and in the married population reveals only one change in the order and it has no significance of importance. The explanation must be sought elsewhere.

TABLE VII.—RATES PER 1,000 TOTAL POPULATION AND PER 1,000 MARRIED POPULATION IN THE ORDER OF FREQUENCY, 1929¹

Geographic division	Divorce rate per 1,000 total population	Geographic division	Divorce rate per 1,000 married population
Mountain.....	3.01	Mountain.....	7.50
Pacific.....	2.84	West South Central.....	7.15
West South Central.....	2.80	Pacific.....	6.51
East North Central.....	2.15	East North Central.....	5.00
West North Central.....	1.83	West North Central.....	4.46
East South Central.....	1.68	East South Central.....	4.32
<i>United States</i>	<i>1.66</i>	<i>United States</i>	<i>4.05</i>
South Atlantic.....	0.98	South Atlantic.....	2.57
New England.....	0.97	New England.....	2.39
Middle Atlantic.....	0.62	Middle Atlantic.....	1.49

¹ Report of 1929, p. 17.

It is probable that the chief explanation of the differences in divorce rates are due to social customs, traditions, and attitudes. It is difficult, if not impossible, to isolate or to disentangle the causative factors.

Puritanism is no doubt the greatest single factor in New England and has been from the beginning. Under this influence matrimonial ills were borne with stoical fortitude. Disapproval is shown in residence requirements before application for divorce ranging from one to five years, but not in the number of causes for which divorces may be granted. These are from six to eleven. There is also a high percentage of the foreign-born and of Catholics, the latter being the highest of all the divisions.

The Middle Atlantic division ranks second in the proportion of the foreign-born and of Catholics. Early settlers, while not Puritans, were typically traditionally minded, especially in the Quaker and Pennsylvania Dutch groups. This influence has been particularly strong. The attitude is shown in the intolerance toward divorce as expressed in

the limited number of legal grounds on which divorces may be obtained—one in New York, three in New Jersey, but eight in Pennsylvania. The rates are correspondingly low.

Southerners are traditional, romantic, chivalrous, and incurably idealistic.¹ Except for the Negro element, of doubtful significance with reference to the divorce rate, the population is more homogeneous than in any other division. This division has the highest rate of Protestant Church membership and is extremely conservative and orthodox. As might be expected, the attitude from colonial days has been reactionary toward divorce—the extreme position being illustrated in the case of South Carolina which permits no divorce on any ground and by that of the District of Columbia with only one recognized ground for absolute divorce.

The rates in the three central divisions, namely, the East North Central, the West North Central and the East South Central, are not strikingly different from each other. They lie midway, both geographically and in regard to divorce rates, between those of the East and the West, and more nearly correspond with the Continental rate. Somewhat recently a pioneer section with a high degree of self-dependence and individualism due to a selected migration and to new environmental adjustments, yet tempered by conservatism carried westward by settlers from the Atlantic coast States, now more highly industrialized but balanced by extensive agricultural development, less traditional than the East and less experimental than the West, this wide area presents a fairly average picture of the divorce situation in the country as a whole.

Similar in many respects to the other three, but affected greatly by the more recent developments in the mining and oil industries, the West South Central division has drawn a

¹ Cf. CHAPMAN, MARISTAN, "The Southern Mind," *Century Magazine*, January 1929, pp. 369-374.

heterogeneous group of temperamentally independent and venturesome people which causes it to exhibit many of the characteristics of the Mountain and Pacific divisions and requires it to be classified with them. This explains in a large measure, no doubt, the rapid rise in the divorce rate which now is exceeded only by that of these two divisions.

In the Mountain and Pacific divisions we observe the effects of frontier conditions. The pioneer spirit put a premium on the individualistic type of behavior which is restive under any form of restraint. Marriage ties, like any other kind, tend easily to be broken if they become irksome. "The spirit of the West" is reflected in a higher degree of personal freedom. Women have not been bound by tradition there as in the East. Most of the Western States admitted women to the ballot long before the enactment of the Nineteenth Amendment. In church membership, Catholic and Protestant, and in the proportion of the foreign-born to the native white population these divisions rank very low.

The foregoing observations are not presented with the idea that they explain the differences in the divorce rates among the geographic divisions but merely to suggest the type of explanation most likely to be valuable and to indicate the direction future investigations may take if we are to seek further enlightenment. Information for the solution of the problem is not today available.

Urban and Rural Comparisons

Based upon the assumption which nearly every writer has made, that divorce is peculiarly an urban phenomenon, which indeed it seems to be in many countries in Europe,¹ the Census Bureau made a comparison for the period 1870 to 1900 between the rates of a group of city counties, that is, counties which contained a city of 100,000 or over, provided that the cities embraced considerably more than half of the population of such counties, with those in the

¹ Cf., BERTILLON, M., *Etude démographique du divorce*, pp. 54-55.

remainder of their respective States, as well as with the rates of the States as a whole. The comparison is made for 45 city counties in 28 different States including the District of Columbia. A summary of the results is given below:¹

TABLE VIII.—PERCENTAGES OF URBAN AND RURAL RATES COMPARED

District	Divorces, annual average* per 1,000 population			
	1900	1890	1880	1870
For States having city counties	0.69	0.51	0.39	0.31
For city counties	0.72	0.53	0.44	0.34
For other counties	0.68	0.51	0.38	0.31

* For five-year periods of which the census year is the median year.

Material is not available in the later annual reports for bringing this table up to date, but in the Report of 1924 a study was made which compared the percentage of population, marriages and divorces in several of the larger cities with the several States in which the cities were located as follows:²

TABLE IX.—CITY AND STATE RATES COMPARED

City and State	City per cent of state total		
	Population	Marriages	Divorces
San Francisco, California	14.0	12.3	19.8
Denver, Colorado	27.5	26.0	40.7
New Orleans, Louisiana	22.0	16.0	24.8
Baltimore, Maryland	51.6	30.7	74.4
St. Louis, Missouri	23.5	22.1	29.6
New York, New York	52.9	58.6	50.1
Philadelphia, Pennsylvania	21.2	22.3	21.9
Chicago,* Illinois	48.8	48.8	59.8
Cleveland,† Ohio	17.5	21.0	20.8

* Cook County.

† Cuyahoga County.

¹ Report of 1867-1906, Part I, p. 17.

² P. 34.

The annual reports since 1916 have published the number of marriages and divorces by counties. It was possible from these figures to construct the following table:

TABLE X.—DIVORCES PER 100 MARRIAGES IN STATES AND COUNTIES¹

States and counties	1929	1927	1922	1916
California.....	29.1	26.4	19.4	18.6
San Francisco.....	37.9	38.1	32.8	22.9
Colorado.....	18.3	19.8	18.1	11.7
Denver.....	30.3	35.6	30.4	18.0
Louisiana.....	10.4	8.6	8.0	7.4
Orleans.....	11.4	9.0	12.0	13.1
Maryland.....	8.4	8.2	6.2	5.0
Baltimore (city).....	21.5	19.3	13.9	8.8
Missouri.....	25.6	25.9	21.0	15.7
St. Louis (city).....	36.4	32.9	23.6	16.7
New York.....	4.2	4.2	4.2	3.3
New York.....	2.1	3.0	3.1	2.3
Pennsylvania.....	11.1	11.2	9.8	6.9
Philadelphia.....	12.1	11.3	9.4	5.7
Illinois.....	18.8	18.7	14.7	12.2
Cook.....	23.0	22.7	17.1	13.4
Ohio.....	23.3	24.7	19.1	12.5
Cuyahoga.....	27.9	32.0	17.0	9.2
Massachusetts.....	11.3	11.4	9.8	6.8
Suffolk.....	13.1	11.6	11.5	7.5

¹ Report of 1916, Table 29; 1922, Table 38; 1927, Table 43; 1929, Table 43.

While these three tables are calculated on different bases they nevertheless agree in the trends which they display.

Table VIII reveals a very small margin in favor of the city counties and little change also is to be noted from decade to decade.

An examination of the facts a little more in detail as set forth on page 18 of the Report of 1908-1909, shows that in two States, New York and Oregon, the rate in the city counties was lower than in the other counties. In Pennsylvania it was the same. In New Jersey, Connecticut, and Michigan the excess in urban counties was very slight. In

the remaining 22 States the excess in urban counties ranged from 10 in Louisiana to 166 in Iowa. That the difference between the rates in city and other counties was not greatly significant is suggested by the fact that in all but 4 of the 28 States with city counties included in this survey there were other counties, at least one, and in some several, which contained comparatively small populations and included no large town or city, which showed rates above, and in some instances far in excess of, the average either for the State or for the city counties. It appears also from further observation that there are many counties containing cities of from 40,000 to 50,000 inhabitants where the rate is below that of the State or of the city counties. It appears somewhat doubtful, therefore, whether the case has been made out for the greater frequency of divorce in cities as a whole prior to 1900.

Since 1916 the situation appears to be somewhat different. Tables IX and X indicate rather conclusively that the upward trend in recent years has been decidedly more rapid in large cities at least, than in other regions, although there are exceptions. New York City is one of these, but the boroughs of Manhattan and Brooklyn conform to the general rule. This coincides with the general belief.

It has been argued that the rapid urbanization of population shows such a similar trend to that of the divorce movement as to reveal a definite causal relation. This seems to be a logical deduction from facts such as the following: "It is in the metropolitan centre that are concentrated all the forces acting most powerfully upon the family . . . It is in the urban community that opportunities for feminine freedom and self-expression in art, literature, music, and varied employments are peculiarly abundant. It is there that religious orthodoxy and other forms of community restraint exert the least influence. It is there that is felt the full force of our scientific and mechanical age in the dissolution of ancient superstitions

and taboos . . . The apartment house and its related institutions create a social environment which enable the individual very largely to escape community control. The scope of personal freedom is greatly enlarged, because a person's life can be known at all intimately by only a few persons . . . It is, thus, in the urban communities that the semi-religious, semi-patriarchal family of our grandfathers has undergone its greatest disintegration. It is there that families are smallest and home ties weakest. The individualized family cottage gives place to the apartment house and apartment hotel. In the maelstrom of urban bustle and fury, the home, as the place in which centre the interests and activities of husband and wife and their more or less numerous progeny, is well-nigh dissolved, when it does not disappear altogether . . .

"It is in the city, in fact, that we see the culmination of all the new forces affecting our domestic institutions."¹

We are not quite sure, however, how far statistics support the logic. It may be that factors other than those of greater family disintegration affect the relative rates. First of all, if urbanization alone were the determining factor, then every city community would show higher rates than rural and the greater the size the greater the rate. This is far from the case as already pointed out. Communities differ as widely in *mores* as in magnitude. Besides, large cities especially are far from homogeneous aggregates. Districts in which foreign elements are segregated may exhibit a much higher degree of group-mindedness than many rural communities and may exert a stronger group control. The increase in foreign elements in cities, because of the stronger family feeling and larger proportion of Catholics in most foreign groups, should be expected to lower city averages. On the other hand there seems to be a tendency for young married persons to migrate to cities. This may explain, as seen in Table IX, why most cities show a smaller propor-

¹ HANKINS, F. H., *An Introduction to the Study of Society*, p. 664.

tion of the total marriages of the state than their respective portion of the population. The tendency of this factor alone, all others remaining constant, would be to raise the city divorce average.

In view of these and other disturbing factors, such as differences in age groupings, in the proportions of marriages to total population and to married population, and in the increase and decrease of population,¹ we must not be too confident in drawing conclusions as to the meaning of the differences in urban and rural rates. It is likely that they do indicate a greater degree of marriage instability under city conditions but the statistics alone are inconclusive.

Rates in White and Colored Populations

It is assumed very generally that the Negroes in the United States are responsible for a rate of divorce very considerably in excess of their portion of the population. Let us test this assumption as far as available material will permit.

The court records in the Southern States rarely include information as to the color of litigants. Recourse therefore must be had to indirect sources of information in order to obtain comparisons of the relative frequency of divorce in the white and colored portions of the population. Estimates made by court officials and divorce lawyers in the South place the divorces granted to colored people at from 50, to as high as 90 per cent of the total number.² These guesses lend a high degree of credence to the statement of Dr. Wright that, "It is probably true that in nearly all of the States where the colored population is very dense, nearly if not quite three-fourths of the divorces granted were to colored people."³ This assertion likewise was

¹ Cf. MOWRE, E. R., *Family Disorganization*, pp. 48-50.

² Cf. Report of 1908-1909, p. 20.

³ Report of 1889, p. 132.

based simply upon the opinions of persons thought to be in positions to judge of the matter with a fair degree of accuracy.

Furthermore, confirmation of these opinions seems to be found in the conjugal condition of the people as shown in the twelfth census of 1900. A table representing the facts for the two Southern geographic divisions follows:

TABLE XI.—PERCENTAGES OF WHITE AND COLORED POPULATIONS COMPARED IN REGARD TO MARRIAGE AND DIVORCE

Divisions and States ¹	Population 15 years of age and over, 1900					
	Total		Married		Divorced	
	Per cent white	Per cent colored	Per cent white	Per cent colored	Per cent white	Per cent colored
South Atlantic.....	65.7	34.3	66.2	33.8	51.8	48.2
Delaware.....	84.1	15.9	85.3	14.7	80.8	19.2
Maryland.....	80.7	19.3	81.5	18.5	78.0	22.0
District of Columbia..	68.9	31.1	69.8	30.2	63.2	36.8
Virginia.....	65.6	34.4	67.2	32.8	56.8	43.2
West Virginia.....	94.9	5.1	95.9	4.1	91.6	8.4
North Carolina.....	67.6	32.4	69.0	31.0	56.4	43.6
South Carolina.....	43.9	56.1	42.7	57.3	19.6	80.4
Georgia.....	54.6	45.4	54.7	45.3	31.6	68.4
Florida.....	56.1	43.9	57.5	42.5	36.5	63.5
South Central.....	70.0	30.0	71.1	28.9	47.0	53.0
Kentucky.....	86.0	14.0	87.7	12.3	70.7	29.3
Tennessee.....	76.1	23.9	77.9	22.1	60.4	39.6
Alabama.....	55.0	45.0	56.0	44.0	26.2	73.8
Mississippi.....	42.1	57.9	41.8	58.2	16.3	83.7
Louisiana.....	53.4	46.6	52.2	47.8	31.0	69.0
Arkansas.....	71.7	28.3	72.7	27.3	46.2	53.8
Indian Territory.....	78.0	22.0	79.8	20.2	65.3	34.7
Oklahoma.....	92.1	7.9	92.3	7.7	83.1	16.9
Texas.....	80.0	20.0	81.2	18.8	47.4	52.6

¹ Division grouping used by the Census Bureau at that time.

These figures show that while the ratio of marriages to population was greater among white people in both

divisions and in all but three States—South Carolina, Mississippi, and Louisiana—the States having the highest percentages of Negro population, in both divisions, and in all the States without exception, the ratio of divorces to population was greater, and in several instances much greater, for the colored than for the white. These facts seem quite remarkable. What is the explanation? Do they constitute final proof of the correctness of the opinions stated above?

The Census Bureau detected an apparent discrepancy here and commented as follows: "In using these figures it should be borne in mind that the number of divorced persons as returned at the census of 1900 was probably grossly deficient, because many divorced persons, sensitive in regard to their marital condition, reported themselves as single or widowed. Possibly this tendency was greater among the whites than among the colored, and if this were the case the figures for the two races would not be exactly comparable. Because of this element of uncertainty, the figures in the table should not be accepted absolutely."¹

Professor Willcox questioned the accuracy of Dr. Wright's statement quoted above from the first report, and devised a simple method of testing its accuracy. He suggested that: "If the contention that the negroes receive a majority of the divorces be true, wherever the former are the most numerous the latter would probably abound. The States with the largest percentages of negroes would have the greatest number of divorces."²

That no such relation exists between these two sets of phenomena is revealed by the table on the following page.

If any conclusion is to be deduced from this table it is that the States having the lowest percentages of Negroes, such as West Virginia, Kentucky, Oklahoma, and Texas, have the highest divorce rates. It is obvious that the

¹ Report of 1908-1909, Vol. I, p. 20.

² *Op. cit.*, p. 30.

TABLE XII.—PERCENTAGE OF NEGROES IN THE TOTAL POPULATION AND THE DIVORCE RATES PER 1,000 TOTAL POPULATION, 1900

States	Per cent of negroes in total population ¹	Divorces per 1,000 total population ²
Delaware.....	16.6	0.16
Maryland.....	19.8	0.40
District of Columbia.....	31.1	0.58
Virginia.....	35.6	0.38
West Virginia.....	4.5	0.64
North Carolina.....	33.0	0.24
South Carolina.....	58.4	
Georgia.....	46.7	0.26
Florida.....	43.7	0.79
Kentucky.....	13.3	0.84
Tennessee.....	23.8	0.89
Alabama.....	45.2	0.69
Mississippi.....	58.5	0.74
Louisiana.....	47.1	0.41
Arkansas.....	28.0	1.36
Indian Territory.....	9.4	1.21
Oklahoma.....	4.7	
Texas.....	20.4	1.31

¹ Census Bulletin 8, "Negroes in the United States," p. 20.

² Special Report, "Marriage and Divorce," 1916, p. 14.

percentage of Negroes in the several States is not the decisive factor in their rates.

In order to test still more accurately the influence of the Negro on the divorce rates, Professor Willcox made a study of the counties in seven States having the highest percentages of Negro population, because of the similarity of legal and social conditions within these more homogeneous units, and found "that in all the States but Arkansas the divorce was less in the black counties than in the white."¹ The Census Bureau employed this same analysis for the year 1900 and comments: "The evidence in regard to conditions now prevailing is anything but conclusive. In Florida in 1900 the divorce rate decreased as the per-

¹ *Ibid.*, pp. 31-32.

centage of Negroes in the total population increased; in Louisiana the reverse was the case. The other States show such a variety of conditions that it seems impossible to draw any definite conclusion from the figures."¹

The final appraisal of the Bureau upon this aspect of the subject is as follows: "The statistics cannot be regarded, therefore, as having established any definite fact in regard to the comparative prevalence of divorce among the two races."² This is probably the main reason for abandoning further study in this field. The annual reports from 1916 on, have nothing on the subject. What the tendencies have been since 1900, in the absence of facts, we can only conjecture.

Variation According to Party to Whom Granted

The question of the relative distribution of divorces granted to husbands and to wives has evoked a good deal of interest. Each of the special reports presents material on the subject which combined affords a survey for the period under consideration. The table shown on page 128 presents the figures for the United States and for the geographic divisions.

Two generalizations seem warranted from a study of this table. First, during the entire period the number of divorces granted to wives was approximately double that granted to husbands. In five divisions, New England, the East and West North Central, the Mountain and the Pacific, wives obtained approximately three times as many, while for the rest it ranged below the average. The highest proportion granted to wives for the entire period was in the Pacific division, but there are exceptions at different periods.

Second, there is a fairly steady but slow increase in the proportion of divorces granted to wives for the whole period which indicates a somewhat definite trend. In the

¹ Report of 1908-1909, Vol. I, p. 21.

² *Ibid.*, p. 22.

TABLE XIII.—PERCENTAGE OF DIVORCES GRANTED TO HUSBANDS AND WIVES

United States and geographic divisions	1929 ¹		1922 ²		1916		1887-1906 ³		1867-1886 ³	
	To husband	To wife	To husband	To wife	To husband	To wife	To husband	To wife	To husband	To wife
<i>United States</i>	28.7	71.3	32.0	68.0	31.1	68.9	33.4	66.6	34.2	65.8
New England.....	26.4	73.6	27.4	72.6	25.9	74.1	28.2	71.8	29.3	70.7
Middle Atlantic.....	30.4	69.6	36.7	63.3	33.0	67.0	33.7	66.3	35.6	64.4
East North Central.....	26.3	73.7	29.0	71.0	27.4	72.6	27.0	73.0	29.9	70.1
West North Central.....	25.3	74.7	28.7	71.3	27.6	72.4	30.4	69.6	33.0	67.0
South Atlantic.....	33.6	66.4	37.9	62.1	38.8	61.2	46.9	53.1	49.2	50.8
East South Central.....	33.5	66.5	37.5	62.5	38.2	61.8	45.8	54.2	46.0	54.0
West South Central.....	33.0	67.0	35.6	64.4	38.0	72.0	42.0	58.0	45.5	54.5
Mountain.....	29.6	70.4	30.9	69.1	29.5	70.5	28.0	72.0	35.4	64.6
Pacific.....	24.1	75.9	28.5	71.5	26.0	74.0	27.4	72.6	25.5	74.5

¹ Calculated from Table 37, Report of 1929.² Calculated from Table 30, Report of 1922.³ Computed from Tables 19 and 20, Report of 1908-1909, Vol. I, pp. 86-88.

United States as a unit and in every division fewer divorces relatively were granted to husbands than to wives in 1929 than in the period 1867-1886. As might be expected there was a wider variation both in the relative proportions and in the rate of change among the several geographic divisions than for territorial United States. The South Atlantic, the East and West South Central divisions show the most rapid and regular decline in the proportion granted to husbands.

Here again we must exercise discretion in attempting to explain the meaning of the facts. The preponderance in divorces secured by wives may be due to the fact that husbands in general, and particularly in those divisions where wives secure three-fourths of all divorces, give more frequent cause for action, or, in case both parties desire the divorce, husbands may be more gallant in permitting their wives to take the initiative. Or, again, the differences in social approval in these sections or the greater independence of women socially or economically may be the deciding factor.

As to the trend toward the greater frequency of divorces granted to wives we may point to the parallel growth of the feminist movement with its insistence upon the right of women to their own personality development, to the revolt against the patriarchal authority of husbands and to the passing of the "clinging vine" type of wives, to the increasing tendency among women to follow independent careers in industry and in the professions, and to their progressive insistence upon a single standard of morals, as among the factors likely to produce the results indicated.

In the explanation of the phenomenon as a whole perhaps nothing better can be offered than that of the Census Bureau, which follows: "It may be that husbands, more often than wives, give occasion for divorce, but the much larger proportion of divorces granted to the wife is, in general, due to the fact that there are for the wife more legal

grounds for divorce than there are for the husband. For example, nonsupport or neglect to provide—a common legal ground for divorce on the part of the wife—is seldom a legal cause for divorce on the part of the husband. And, although the law may make no distinction between the parties, there are certainly comparatively common grounds for divorce, such as cruelty, which are more readily applicable against the husband than against the wife. Moreover, where each party desires divorce, it is probable that the wife more often than the husband makes the application, since a cause for which she would be granted a divorce might reflect less unfavorably upon the characters of the parties than would a cause for which the husband would be granted a divorce.”¹

In the absence of more positive data the reader must draw his own conclusions as to the probability of these attempted explanations.

Variations in Regard to Cause

The distribution of divorces on the basis of the several legal grounds and according to the party to whom granted reveals some interesting variations. While the legal causes differ greatly among the States in number, in content, and in phraseology, they nevertheless may be grouped readily in several general classes, which, according to the classification arranged by the commissioner of labor in the first report and employed without change in all succeeding reports include: adultery, cruelty, desertion, drunkenness, neglect to provide, combination of preceding causes, and all other causes.

In the table following, the divorces are distributed by cause for sample years in accordance with the party to whom granted in such a way as to show the relative importance of the different classes of causes:

¹ Report of 1929, p. 20.

TABLE XIV.—PERCENTAGE DISTRIBUTION BY CAUSE OF DIVORCES GRANTED TO HUSBAND AND WIFE, RESPECTIVELY, FOR YEARS SPECIFIED¹

Cause and party to whom granted	1929	1922	1916	1887-1906
Total divorces:				
All causes.....	100.0	100.0	100.0	100.0
Adultery.....	8.3	10.9	11.5	16.3
Cruelty.....	40.8	34.5	28.3	21.8
Desertion.....	29.6	32.8	36.8	38.9
Drunkenness.....	1.8	1.0	3.4	3.9
Neglect to provide.....	3.9	4.2	4.7	3.7
Combination of causes.....	6.8	8.7	8.6	9.4
All other causes.....	8.8	7.8	6.8	6.1
Granted to husband:				
All causes.....	100.0	100.0	100.0	100.0
Adultery.....	12.7	17.6	20.3	28.7
Cruelty.....	32.4	25.0	17.4	10.5
Desertion.....	43.2	44.3	50.0	49.4
Drunkenness.....	0.4	0.3	0.8	1.1
Neglect to provide.....				
Combination of causes.....	3.2	4.6	4.3	4.5
All other causes.....	8.1	8.3	7.2	5.7
Granted to wife:				
All causes.....	100.0	100.0	100.0	100.0
Adultery.....	6.5	7.7	7.5	10.0
Cruelty.....	44.1	39.0	33.2	27.5
Desertion.....	24.2	27.4	30.8	33.6
Drunkenness.....	2.4	1.4	4.5	5.3
Neglect to provide.....	5.4	6.2	4.6	5.5
Combination of causes.....	8.3	10.6	10.5	11.8
All other causes.....	9.1	7.6	6.5	6.4

¹ From report of 1929, p. 24.

Table XV is added to show for the same sample years the relative percentages of the total number of divorces granted to husbands and to wives for all causes and for each of the various classes of causes.

The most obvious deduction from Table XIV is that divorces for adultery show a marked decline for the entire period under review, both in the percentage of the total number and in the proportion granted to both husbands and wives for that cause. Those on the ground of cruelty

TABLE XV.—PERCENTAGE DISTRIBUTION OF DIVORCES FOR EACH SPECIFIED CAUSE, BY PARTY TO WHOM GRANTED FOR YEARS SPECIFIED¹

Cause and party to whom granted	1929	1922	1916	1887-1906
All causes total	100.0	100.0	100.0	100.0
Granted to husband	28.7	32.0	31.1	33.4
Granted to wife	71.3	68.0	68.9	66.6
Adultery:				
Granted to husband	44.0	51.9	54.9	59.1
Granted to wife	56.0	48.1	45.1	40.9
Cruelty:				
Granted to husband	22.8	23.2	19.2	16.1
Granted to wife	77.2	76.8	80.8	83.9
Desertion:				
Granted to husband	41.8	43.2	42.3	42.5
Granted to wife	58.2	56.8	57.7	57.5
Drunkenness:				
Granted to husband	6.6	7.8	7.4	9.4
Granted to wife	93.4	92.2	92.6	90.6
Neglect to provide:				
Granted to husband				
Granted to wife	100.0	100.0	100.0	100.0
Combination of causes:				
Granted to husband	13.6	17.0	15.4	16.1
Granted to wife	86.4	83.0	84.6	83.9
All other causes:				
Granted to husband	26.4	33.9	33.3	31.0
Granted to wife	73.6	66.1	66.7	69.0

¹ From Report of 1929, p. 25.

reveal a like rapid but precisely reverse movement. Desertion as a cause exhibits the same trend as that of adultery but to a less degree.

The three major causes, it should be noted, show the same order of importance both for the percentage of the

total number and for the percentage of the number granted to wives. In the period 1887-1906 the order stood desertion, cruelty, adultery. In 1929 the order had changed to cruelty, desertion, adultery. In the proportions granted to husbands for these same causes the order stands differently. In the first period it was desertion, adultery, cruelty. In the last, desertion, cruelty, adultery. While the highest percentage of all divorces is granted for cruelty, desertion still remains the greatest single cause for divorces granted to husbands.

Two characteristic trends are discernible for the figures presented in Table XV. Of the total number of divorces granted on the ground of adultery the respective ratios granted to husbands and to wives has been reversed since the period of 1887-1906, husbands receiving the higher percentage in the earliest period and wives in the latest. Cruelty is an increasing ground for divorces granted to husbands, although there has been a slight decline since 1922. Wives seem much more inclined than husbands to secure divorces for a combination of causes and for causes other than major ones.

From a study of the more complicated tables in the various census reports we find that the distribution of divorces granted for the major causes show much wider variation in the several geographic divisions and greater still among the States, than for the country as a whole. For example, in the percentage distribution granted to husband for the year 1929, the Middle Atlantic division ranks highest for the cause of adultery and the Pacific lowest. For the cause of cruelty, the West South Central stands first and the South Atlantic last. For that of desertion, the East South Central leads and the East North Central trails. With reference to the States, the proportion granted to husbands ranges in 1929, for adultery, between 93.2 per cent in New York to 0.3 per cent in Nevada; for cruelty, from 0.7 per cent in Virginia to 72.6 per cent in

Michigan; and for desertion from 5.6 per cent in New York¹ to 87.2 per cent in New Mexico. If the proportion granted to wives is considered, the same wide variations are to be found.

It is simply impossible to believe that these figures constitute a true index to the behavior differences of divorced persons prior to divorce in these different areas. While actual data is not available for the proof of this assertion, certain known facts which bear upon the question are submitted.

It should be borne in mind, in evaluating the importance of the statistics of distribution for cause, that the legal grounds on which divorces are granted are not necessarily the causes underlying marriage dissolution. In fact they often obscure the real causes which lie deeper and upon which figures themselves shed little light.

Everyone who has any information on this subject knows that when persons decide upon divorce their action is limited by the availability of suitable statutory grounds in their State of residence. If these are not to be found, either they must choose the cause most conformable to their convenience or least liable to affect their reputation, or migrate to another State where such cause exists. Factors effectively influencing their procedure, such as the *mores* of their social group, community habits, or mere personal inclinations, often are as important as the nature of their matrimonial difficulties. While it is true that between States having the same number and approximately the same legal grounds there is a wide variation both in the rate and in the distribution for cause, still it is more than probable that neglect to provide, for example, would show a much higher percentage as a cause for divorce if it were a legal ground in all States, or that adultery would

¹ Absolute divorce is granted only for adultery, but "marriage may be dissolved on ground of absence for five successive years, if proof is given of diligent but unavailing search, and consequent presumption of death."—Report of 1929, p. 29.

show a smaller proportion were it not the only ground for absolute divorce in the State of New York and in the District of Columbia, and but one of a few causes in some other States. It has been asserted very often that in New York State persons not infrequently have perjured themselves in order to provide evidence necessary to secure divorce upon the single statutory ground when in fact adultery had not been committed.

While it probably is true that the distribution of divorces on the basis of legal grounds has some significance in revealing conditions and trends it is quite unscientific to assert dogmatically that it presents an adequate picture of the situation. Here, then, is another domain in which research would add much to our present incomplete knowledge.

Conditions as to Children

There is much reputed concern both as to the manner in which children affect divorces and as to the manner in which divorces affect children. The current opinion seems to be that the presence of children in the family acts as a deterrent to complete marital dissolution but that when divorce does occur the effect upon the children involved is usually little less than a calamity. Upon the first of these assumptions the statistics possibly may throw some light. The second, until we have more scientific data, must remain problematical.

In the table shown on page 136 the percentage distribution of divorces is shown according to whether children were reported. In cases in which there was no report as to children the Census Bureau assumes that there were none, or, at least, none young enough to be affected by the decree.

The only conspicuous fact deducible from this table is that divorces of couples reporting no children show a preponderance over all others and that in this class there has been a steady increase for the entire period. We

TABLE XVI.—DIVORCES CLASSIFIED ACCORDING TO WHETHER CHILDREN WERE REPORTED AND BY PARTY TO WHOM GRANTED¹

Party to whom granted and report as to children	Per cent distribution			
	1929	1922	1916	1887-1916
All divorces:				
Total.....	100.0	100.0	100.0	100.0
Reporting children.....	37.2	34.0	37.7	39.8
Reporting no children.....	57.1	56.0	52.1	40.2
Not reporting as to children.....	5.7	9.9	10.2	19.9
Granted to husbands:				
Total.....	100.0	100.0	100.0	100.0
Reporting children.....	27.8	27.0	27.8	26.0
Reporting no children.....	64.5	62.4	58.7	47.0
Not reporting as to children.....	7.8	10.6	13.5	27.0
Granted to wives:				
Total.....	100.0	100.0	100.0	100.0
Reporting children.....	41.0	37.4	42.2	46.8
Reporting no children.....	54.1	53.0	49.2	36.9
Not reporting as to children.....	4.8	9.6	8.6	16.3

¹ From Report of 1929, p. 38.

note furthermore, that in far fewer instances now than formerly do people fail to report as to children. If, as assumed, no report as to children means no children, then the percentages reporting no children and not reporting as to children should be added together, in which case, most of the increase noted disappears. The small residue may be accounted for through the increase in childlessness among married people generally, for if a random sampling were made among married people of like duration of marriage it is probable that a similar ratio would be found.

Furthermore, a good logical argument can be adduced, though without factual proof, that the conditions which ultimately lead to divorce deter couples from having children and the popular assumption puts the cart before the horse. Professor Mowrer states it thus: "Just because there were no children, however, does not necessarily mean

that had there been offspring there would have been no divorce . . . It may be that to a large degree the persons who get divorces are those who do not want children, and for much the same reason, *i.e.*, because they wish to retain their personal freedom." And again, "It may indicate that in some cases at least (where adultery is the cause for divorce) the absence of children is symptomatic of lack of sexual satisfaction in the marriage relationship."¹

That the absence of children, then, can be regarded as contributing to the frequency of divorce is supported neither by the statistics nor by logical inference.

The following table is presented in order to aid in answering the question: To what extent does the presence of

TABLE XVII.—DIVORCES CLASSIFIED ACCORDING TO PARTY TO WHOM GRANTED AND WHETHER CHILDREN WERE REPORTED*

Report as to children and party to whom granted	Percentage distribution			
	1929	1922	1916	1887-1906
All divorces:				
Total.....	100.0	100.0	100.0	100.0
Granted to husband.....	28.7	32.0	31.1	33.4
Granted to wife.....	71.3	68.0	68.9	66.6
Reporting children:				
Total.....	100.0	100.0	100.0	100.0
Granted to husband.....	21.4	25.4	22.9	22.1
Granted to wife.....	78.6	74.6	77.1	77.9
Reporting no children:				
Total.....	100.0	100.0	100.0	100.0
Granted to husband.....	32.4	35.7	35.0	39.0
Granted to wife.....	67.6	64.3	65.0	61.0
Not reporting as to children:				
Total.....	100.0	100.0	100.0	100.0
Granted to husband.....	39.2	34.2	41.4	45.4
Granted to wife.....	60.8	65.8	56.6	54.6

* From Report of 1929, p. 39.

¹ *Family Disorganization*, pp. 73, 77.

children in the family act as a deterrent to divorce? It has been assumed theoretically that parents, particularly mothers, hesitate to break up the home for the sake of the children. What do the statistics reveal?

Table XVI shows only a slight decrease in divorces where children were reported from the period 1887-1906 to 1922 but an actual increase in 1929. Table XVII brings out the very striking fact that, whereas wives obtained approximately two-thirds of all divorces, in the cases where children were reported they obtained more than three-fourths—the ratio being 77.9 to 22.1 per cent in the period 1887-1906 and 78.6 to 21.4 per cent in 1929. With regard to geographical distribution in 1929 it was found that in every division and in every State in the Union excepting New York the percentage of divorces reporting children was higher when the divorce was granted to the wife than when it was granted to the husband.¹

Of course a considerable part of this may be due to the reluctance of the court to grant divorces to husbands where dependent children are involved because of the problem of support, and to the further fact that when divorces are granted the court much more often than otherwise assigns the custody of the children to the mother which means for her the mere severance of the marital tie without separation from her children. But whatever the explanation may be, there seems to be no confirmation, so far as the data are concerned, of the assumption that the presence of children acts as a check upon divorces, especially in the case of wives. To some extent the opposite effect seems to be indicated. It is conceivable that some wives might endure certain marital tribulations in case they alone were affected. But if the welfare of children were jeopardized they might feel constrained to break the marriage ties as the best means of safeguarding that welfare.

¹ Cf. report of 1929, p. 40.

The most important aspect of the problem, however, that of the effect of divorce upon children, remains to be considered. Here, it would seem, the greatest misapprehensions are to be found.

It is held almost universally that the normal environment of children and that best adapted to their training and to the most successful adjustment of their behavior reactions to their social group in the interest of good citizenship, is the happy, well-ordered home, in which both parents cooperate helpfully to further these desirable ends. In this opinion students of child psychology and persons devoted to the interests of child welfare concur, and there seems to be no reason to question their judgment. Moreover, in these days when the spiritual functions of the home are assuming preponderance over the economic and physical ones, the personal relationships of mutuality, harmony, and happiness of parents, assume the role of greatest importance.

Now it is the deprivation which the child suffers when these conditions are absent, or when they are the reverse, that everyone deplors. But it is a misunderstanding of child psychology and a gross misapprehending of juvenile needs to assume that children's interests can be conserved by subjecting them to the mental tensions and emotional strains involved in a home of parental incompatibility with the consequent discord and conflict. Often the injury to the disposition and character of the child subjected to these conditions is irreparable, and few today would argue in favor of such a method.

But this, after all, is not the problem involved in divorce. Legal divorce, as we have pointed out quite clearly, is not the instrument of destruction which lays waste the family. Marriages are dissolved for many causes and, as we have noted, despite the presence of children and often in their interest. When marital tragedies occur husbands and wives break with each other. They separate and live apart. If

there are dependent children, more or less adequate provision has to be made for their care. They go with one of the parents, with relatives or friends, or to some public institution. All this occurs prior to divorce, and when that incident transpires, the only effect upon the children involved is to define their legal status by assigning them, through the order of the court issuing the decree, to one or the other of the parents or by making such other legal provision for their care as the court may deem wise. Divorce, then, in most cases is beneficial to the children rather than injurious. In all those cases, and they are legion, in which the parents are estranged but contend strenuously for the possession of the children, often poisoning the youthful minds with respect to each other, thus producing deleterious mental attitudes and conflicts, the sad plight of the children is relieved or mitigated by divorce rather than otherwise.

It is obvious, then, that much of the concern over the effects of divorce upon children is misplaced and reveals a confusion of thinking which hinders rather than helps in the clarification of this subject.

There are several other types of variation in the divorce movement which might be considered, such, for example, as distribution by religious affiliation, between native and foreign, by duration of marriage prior to divorce, as to annulments, as to contested cases, as to alimony, and as to occupation. But either because of inadequate data or because of their lack of important bearing upon the main purpose of this study, they are omitted here.

B. *Inadequate Explanations of the Trend*

CHAPTER SIX

COMPARATIVE STATISTICS

Introductory

HAVING SET FORTH IN PREVIOUS CHAPTERS THE HISTORY and status of divorce in civilization past and present, and having described the chief characteristics of the divorce trend in modern society, particularly in the United States during the last sixty years, the problem now confronts us of interpreting these phenomena as the results of causes adequate to produce them.

Obviously there are two aspects to this problem; the one being the inquiry into the causes of divorces themselves, and the other, the explanation of their greater frequency in terms of the more active operation of these causes. As a matter of general procedure these two phases do not require separate treatment, since the causes of divorces will be found to be of such character as to reveal their increasing effects.

It is conceivable, however, that the increase of divorces may be explained in whole or in part, by factors which lie quite outside this process. Before we enter upon the analysis of the causes, then, the way must be cleared by the consideration of these other possibilities of which there seem to be two.

In the first place, the problem may be one merely of comparative statistics. It is possible that the increase in the number of divorces may be accounted for by a like increase in the population, or by a corresponding increase in the proportion of marriages within the population. In other words, divorces may increase in absolute numbers without

becoming relatively more frequent, if the population, or if the total number of married persons increases at the same rate.

In the second place, it may be that the divorce increase is mainly a legal phenomenon. If, as has been asserted so often and with so much assurance, there has been a comparable increase in the laxity of law and of its administration in regard to divorce, then the divorce increase merely may reflect this parallel trend, that is, on the assumption that marriages depend for their perpetuity upon legal constraints, then the relaxation of these safeguards or a diminution in their enforcement logically would be followed by a corresponding increase in marriage dissolutions without the operation of other causes.

In this, and in the chapters immediately following, these factors are examined in order to show what part they play in the explanation of the divorce situation.

Divorce Increase Compared with Population Growth

That the actual number of divorces is increasing rapidly is established by the figures presented in the previous chapter.¹ Whether divorces are relatively more frequent, that is, whether the rate is rising, depends upon the ratio of divorces to population within the corresponding periods or years.

Assuming that we have a constant ratio expressed in a definite divorce rate within any given unit of population, as, for example, so many per thousand, then any increase in the population by the addition of other thousands will result in a corresponding increase in the total number of divorces without any change in the rate.

What are the facts?

Since we do not have an annual enumeration of the population, accurate comparison of divorces can be made only with the census years. By adding half the decennial

¹ Cf. *supra*, Tables I and II.

increase to the population at the beginning of each decade, however, sufficiently accurate five-year periods are obtained in order to display the general trend. For purposes of comparison we have constructed the table below giving the figures of divorce as averages for five-year periods of which the census and mid-census years are the median years and have compared these with the population in the census years and with the estimated population for the quinquennial years midway between. The reason for the use of five-year averages in divorces is in order to secure more typical figures than those of the years given and to eliminate any peculiarities which any single year might exhibit.

TABLE XVIII.—TOTAL AND PERCENTAGE INCREASE OF POPULATION AND OF DIVORCES
COMPARED FOR PERIODS SPECIFIED

Year	Population*			Divorces†			Popula- tion to one di- vorce	Di- vorces per 1,000 popu- lation
	Total	Increase		Annual aver- age ‡	Increase			
		Number	Per cent		Number	Per cent		
1925	114,242,833§	8,532,213	8.1	176,887	29,551	20.0	646	1.55
1920	105,710,620	6,869,177	6.5	147,336	40,985	38.5	718	1.39
1915	98,841,443§	6,869,177	7.5	106,351	21,730	25.7	929	1.07
1910	91,972,266	7,988,846	9.5	84,621	16,830	24.8	1,087	0.92
1905	83,983,420§	7,988,845	10.5	67,791	12,289	22.1	1,239	0.81
1900	75,994,575	6,523,431	9.4	55,502	14,890	36.7	1,369	0.73
1895	69,471,144§	6,523,430	10.3	40,612	7,415	22.3	1,711	0.58
1890	62,947,714	6,395,966	11.3	33,197	8,573	34.8	1,896	0.53
1885	56,551,748§	6,395,965	12.7	24,624	5,481	28.6	2,297	0.44
1880	50,155,783	5,168,667	11.5	19,143	4,774	33.2	2,620	0.38
1875	44,987,116§	5,168,667	13.0	14,369	3,162	28.2	3,131	0.32
1870	39,818,449||	.....	....	11,207	.....	....	3,553	0.27

* Fifteenth Census of the United States, Population, Vol. I.

† Marriage and Divorce, Report 1929, p. 15.

‡ The average is for the five-year period of which the year given is the median year.

§ Estimated by adding half the decennial increase to the census years.

|| Estimated Corrected Increase, Census 1920, Vol. II, p. 15.

From the study of this table some interesting deductions may be made. The population in 1925 was approximately three times that of 1870, while the annual average number of divorces for the five-year period with the median year 1925 was over sixteen times that for the corresponding period represented by the year 1870, showing the divorce increase to have been somewhat over five times as rapid as that of the population.

The contrast in the comparative rates of increase is made still more impressive if we assume the rate of one divorce on the average for each 3,553 of the population, the rate prevailing in 1870, to have been a stationary rate. In order then to have produced an average total of 176,887 divorces in the median year 1925, a population of 608,633,757 would have been required, that is, a population more than five times that estimated for that year, namely 114,242,833. Or, had divorces been as frequent in the quinquennium represented by the year 1870 as they were in that of 1925, that is, one for each 646 of the population, then there would have been a total of 61,638 divorces in 1870 instead of 11,207 as shown in the table, or more than five times as many.

Furthermore, if we observe the comparative movements of the two sets of phenomena, it will be noted that while population increased by a somewhat regular addition from period to period after 1885, except for the periods of 1905, 1910, and 1925, of a number clustering closely around an average of something over six millions, or an average increase over each preceding period of 10 per cent, divorces show a rapidly accelerated rate of increase for the corresponding periods rising steadily from a little more than three thousand, to more than twenty-nine thousand, or an average increase over each preceding period of 28.7 per cent.

If, as has been shown, divorces increased at a ratio of more than five times that of the population, then the differ-

ence, or somewhat less than one-fifth of the divorce increase, is to be accounted for by the increase in the population. The explanation of the divorce increase, therefore, except for this one-fifth, must be sought elsewhere.

This comparison alone, however, is not conclusive in view of the fact that divorces do not take place throughout the entire population but only in the married portion of it. If other factors, including the divorce rate, should remain constant, and this proportion of the population should increase, then the number of divorces would increase due to this fact alone.

What do the figures show in this respect?

Marriages in the Total Population

While the study of marriages in relation to the total population can provide no final answer to our question, these comparisons are indicative of the trend of marriages, and in view of the frequent assumption that marriages are on the decline, we present the figures.

The second report on marriage and divorce provides, for the first time, reliable data for the computation of marriage rates in the United States. The subsequent annual reports contain similar material and estimates have been made by the Census Bureau to fill in the intervening years.¹ Employing the same method of obtaining the relative frequency of marriages in respect to the total population as that used in reference to divorces, namely, that of averaging five-year periods in order to eliminate the fluctuations in individual years, the table shown on page 146 is constructed for the period 1890 to 1925.

This table exhibits certain definite trends. Of course it should be remembered that many of the figures are estimates. The population for the mid-census years are all estimates obtained by the method employed in table XVIII. The annual average of marriages for the years 1910, 1915,

¹ Report of 1929, p. 5.

TABLE XIX.—MARRIAGES IN RELATION TO THE POPULATION

Year	Population*			Marriages†			Popula- tion to one mar- riage	Mar- riages per 1,000 popula- tion
	Total.	Increase		Annual aver- age‡	Increase			
		Number	Per cent		Number	Per cent		
1925	114,242,833§	8,532,213	8.1	1,201,264	56,707	4.9	95	10.52
1920	105,710,620	6,869,177	6.5	1,144,557	89,745	8.5	91	10.83
1915	98,841,443§	6,869,177	7.5	1,054,812	122,238	13.1	94	10.67
1910	91,972,266	7,988,846	9.5	932,574	126,235	15.6	102	10.25
1905	83,983,420§	7,988,845	10.5	806,339	121,358	17.7	104	9.60
1900	75,994,575	6,523,431	9.4	684,981	88,999	14.9	111	9.01
1895	69,471,144§	6,523,430	10.3	595,982	47,203	8.6	117	8.57
1890	62,947,714	.....	.....	548,779	.....	.....	115	8.72

* Fifteenth Census of the United States, Population, Vol. I.

† Marriage and Divorce, Report 1929, p. 5.

‡ Annual average is for the five-year period of which the year given is the median year.

§ Estimated as in previous table.

and 1920 likewise are estimates made by the Census Bureau. There are but two years in this period of three five-year averages, namely, 1916 and 1922, for which we have actual data. But since the missing years were computed mainly by extending to the entire country the rates in the 18 States for the period 1907 to 1915, and in the 25 states for the period 1917 to 1921, which kept their own annual records,¹ the figures probably represent a fair degree of reliability.

Accepting the table then as a fairly accurate picture of the marriage situation during the period 1890-1925 we may note several characteristics.

On the whole the ratio of marriages to population has been increasing. The five-year period showing the greatest percentage of marriage increase over the preceding one was that represented by the year 1905. While marriages

¹ Cf. Report of 1929, p. 4.

have shown an increase for each period, the rate of gain since 1905 has slowed down.

The five-year period exhibiting the highest rate of marriages per thousand of the population was the quinquennial year 1920, probably affected somewhat by the war lag. Until that time there had been a steady increase in the rate except for the period of 1895. The last period, 1925, however, shows a slight decrease in the rate, probably due in part also to the readjustment following the accumulation of deferred marriages in the period of 1920.

From the period 1890 to that of 1925 the annual average of marriages increased 119 per cent while population made a gain of 81.5 per cent. In 1890 there was a marriage rate of 8.72 per 1,000 of the population while in 1925 the rate had risen to 10.52 and had been higher still in 1920, namely, 10.83. In 1890 there was an annual average of one marriage to each 115 persons and in 1925 one marriage to each 95, and there had been one to 91 in 1920. Assuming that one marriage to each 115 persons, the rate in 1890, to have been a fixed rate, it would have required a population of 138,145,590 instead of 114,242,833 given for that year. Or, if one marriage to each 95 persons in the total population, the frequency rate in the period 1925, had existed in 1890 then there would have been an annual average of 662,607 marriages instead of 548,779, or an average of 113,828 more per year than there was at that time.

Even if the number of marriages is augmented somewhat by duplications as the result of remarriages of persons divorced during any year or period, a factor which cannot be determined accurately, still it is unlikely that this number was large enough to account for the total marriage increase, so that the indications are that marriages are gaining faster than the population and to that extent this margin probably would account for some increase in the proportion of married persons in the population and thus would result, other factors remaining constant, in some

increase in divorces beyond that corresponding with the mere growth of population, but it would have been slight as compared with the actual divorce increase, and would have explained a mere fraction of it. The evidence, then, seems to be that other factors, far from being constant, on the contrary, were highly influential.

Marriages in the Adult Unmarried Population

Marriages, however, do not occur throughout the entire population but only in that portion of it which is adult and unmarried. A more scientific comparison, therefore, is that between marriages and this eligible group. Obviously if the marriageable portion of the population should become relatively larger and the rate of marriages remained unchanged, then the number of marriages automatically would increase irrespective of the growth of population.

By adding together the single, the widowed, and the divorced, fifteen years of age and over, but not including those whose marital condition was not reported, the following table was constructed:¹

TABLE XX.—MARRIAGES IN RELATION TO ADULT UNMARRIED POPULATION

Census year	Unmarried population 15 years of age and over	Marriages, annual average*	Unmarried population 15 years of age and over to one marriage	Marriages per 1,000 unmarried population 15 years of age and over
1920	28,768,988	1,144,557	25.2	39.8
1910	26,472,147	932,574	28.4	35.2
1900	21,959,038	684,981	32.0	31.2
1890	17,980,045	548,779	32.8	30.6

* For the five-year period of which the census year was the median year.

No significant differences are disclosed by the use of this method when compared with the facts set forth in the last table. There was a steady increase from decade to decade

¹ *Census of 1920*, Vol. II, p. 387.

in the rate of marriages per 1,000 of the unmarried population fifteen years and over which corresponds fairly closely with the general trend of the marriage rates when compared with the total population. It will be noted that the rate rose steadily from 30.6 to 39.8 which is a little greater than that calculated on the basis of the total population but not enough to be of any particular importance.

The general comments here would be much the same as those in the preceding section and need not be repeated.

Divorce Increase Compared with Married Population Growth

We return, now, to the consideration of divorces in relation to the married portion of the population. As we have noted, the proportion which the number of married persons sustains to that of the total population may vary. Divorces can occur only among the married, and should this proportion increase, due to change in age groupings, to a greater tendency to marry which we have found to be the case, or to any other cause, it would affect divorces, that is, assuming a fixed ratio between divorces and the proportion of married persons, then any increase in this proportion would result in an increase in the number of divorces without any change in the divorce rate.

Beginning with the eleventh census in 1890, the marital condition of the population is given and for purposes of comparison the Census Bureau has estimated this phenomenon for the two preceding decades. We are able thus to construct the table shown on page 150.

The results obtained by this method are substantially the same as those found between divorces and the total population. There are differences but they are relatively slight. In the first place, the percentage of the total population reported as married at each census year remained relatively constant for three decades and then rose slowly

TABLE XXI.—DIVORCES COMPARED WITH MARRIED POPULATION

Census year	Total population	Married population	Per cent of population married	Divorces, annual average*	Married population to one divorce	Divorces per 1,000 married population
1920	105,710,620	43,176,926	40.8	147,336	293	3.41
1910	91,972,266	35,781,667	38.9	84,621	423	2.36
1900	75,994,575	27,770,101	36.5	55,502	500	2.00
1890	62,947,714	22,447,769	35.7	33,197	676	1.48
1880	50,155,783	17,908,092†	35.7	19,143	935	1.07
1870	39,818,449‡	13,823,708†	34.7	11,207	1,233	0.81

* For the five-year period of which the census year was the median year.

† Estimated.

‡ Estimated corrected increase.

for the next three, showing a gain of 6.1 per cent, or 40.8 per cent of the total population married in 1920 as against 34.7 per cent in 1870. If we apply this 1870 percentage to the population of 1920 the resulting figure is 36,681,585 which would have been the number of the married population had that percentage remained unchanged, instead of the 43,176,926 reported, or a difference of 6,495,341.

In the next place, had the rate of divorces remained stationary during this period the actual number of divorces would have shown a corresponding increase because of this larger percentage of the population married. This number can easily be computed. The number of divorces per 1,000 of the married population, it will be noted, was 0.81 in 1870. Had that rate persisted the number of divorces in 1920 would have been 34,973 instead of 147,336. If we apply this same rate to the 36,681,585 as shown above, the number of divorces would have been 29,712; the difference, or 5,261, would have been due to the change of the percentage increase of the married. This number is not impressive since it accounts for only a small fraction of the divorce increase from an average of 11,207 in 1870 to that

of 147,366 in 1920. It shows that the increase was due to other causes and that it was affected only slightly as a result of the increase in the percentage of married persons.

We may dismiss this factor, then, as of little consequence in explaining the divorce trend. Approximately four-fifths of the divorces granted in the United States in the last sixty years remain totally unexplained from the point of view of comparative statistics.

Divorce and Marriage Rates Compared

Before leaving this subject, however, it seems desirable to make one further comparison. Reference is made repeatedly to the ratio of divorce rates to marriage rates. Let us study this phenomenon and determine its significance.

It will have been noted that marriage rates were computed for the five-year periods beginning with 1890 while divorces were given for the periods from 1870, the reason being the absence of reliable marriage data before that time. We quote from the second report: "It would be interesting to know how these marriage rates compare with those prevailing in earlier years, but material for satisfactory comparisons is not available. It has been computed, however, that for the counties in which the marriage returns were ostensibly complete the annual average number of marriages per 10,000 population was 98 in 1870 and 91 in 1880. If these figures could be regarded as representative of the country as a whole they would show that the rate in 1900 was lower than that in 1870 but higher than those in 1880 and 1890. The figures for these early years, however, represent only about one-half the population and therefore cannot be regarded as conclusive."¹

By calculating the marriages in 1870 and in 1880 on the basis of 9.8 and 9.1 respectively per 1,000 of the population we have constructed the following table for the period 1870 to 1925:

¹ Report of 1908-1909, Part I, p. 8.

TABLE XXII.—MARRIAGE AND DIVORCE RATES COMPARED

Year	Marriages, annual average *	Divorces, annual average *	Marriages to one divorce	Divorces per 1,000 marriages
1925	1,201,264	176,877	6.7	147.3
1920	1,144,557	147,336	7.7	128.6
1915	1,054,812	106,351	9.9	100.8
1910	932,574	84,621	11.0	90.1
1905	806,339	67,791	11.9	85.3
1900	684,981	55,502	12.3	81.0
1895	595,982	40,612	14.6	68.1
1890	543,761	33,197	16.3	61.0
1885				
1880	456,456†	19,143	23.8	42.0
1875				
1870	377,888‡	11,207	33.7	29.6

* For the period of five years in which the year given was the median year.

† Computed on the basis of 9.1 marriages per 1,000 population in 1880.

‡ Computed on the basis of 9.8 marriages per 1,000 population in 1870.

The actual or estimated number of marriages reported for the census and mid-census years 1890 to 1925 deviates on the average only 1.4 per cent from the annual average for the five-year periods. In only one year, 1915, is the difference important, 4.7 per cent, and this may be due to the inaccuracy of the estimated marriages for that year. Notwithstanding the fact that the figures for 1870 and 1880 are computed on admittedly insufficient data, it is hardly probable that they would vary much more than 5 per cent from the annual averages for these years had we the actual data for computing them. Such a variation, or even a much larger one for these years, would not materially change the general character of the trend which the figures reveal.

It is clear, therefore, that the ratio of divorces to marriages is increasing constantly and at a rapidly accelerated rate. Whether computed on the basis of the number of marriages to one divorce or of the number of divorces per 1,000 marriages, the gain in the number of divorces over

that of marriages was approximately threefold in the period 1870 to 1900 and fivefold in that from 1870 to 1925.

What is the significance of this comparison?

Obviously there is little or no direct causal connection between these two sets of phenomena. They are not dependent upon each other. The divorces for any year do not occur alone nor chiefly among the marriages performed during that year but among these plus all existing former marriages. The marriages for any year are not alone among persons divorced during that year but among these plus all other unmarried adults.

These two rates, therefore, exhibit two separate and distinct but coexisting trends, each being the result of different sets of causes and conditions. The trends which they reveal, however, are important, even if one is not the cause of the other. What they do show is that whereas the total number of marriages was being augmented by the addition of 33.7 new ones per year on the average during the five-year period of which 1870 was the median year while one was being subtracted by divorce, it was being augmented by only 6.7-marriages to one which was dissolved annually in the corresponding period of 1925. Or, stated conversely, while the total volume of marriages in the period of 1870 was being depleted by the subtraction of 29.6 broken ones for each 1,000 new ones added, in the period of 1925 the corresponding deduction was 147.3 per 1,000 added. In each case the difference was five to one.

Since as shown above there is nothing in the statistics of the growth of the total population or in the increase in the married portion of the population which could account for more than approximately one-fifth of this difference, this analysis serves merely to emphasize further the necessity for looking elsewhere for the explanation.

CHAPTER SEVEN

CIVIL DIVORCE LEGISLATION

IT IS NOT OUR PURPOSE IN THIS INVESTIGATION TO PRESENT A complete digest of civil legislation in respect to marriage and divorce, but merely to present as much of the material as is necessary in order to reveal the trend it has taken in the United States during the period covered by the several census reports and in order to learn what relation such trend may sustain to the divorce trend, and also to study the influences which may be exerted by law in general upon divorce rates.

If "the laws governing marriage and divorce," to employ a phrase currently used in this connection, to any considerable degree control or determine the divorce trend, then the direction the movement has taken certainly would indicate that there has been a positive and progressive relaxation either on the part of the law or in its administration, or both. As a matter of fact, the situation is precisely the reverse. The general trend of legislation and of administration in regard both to marriage and to divorce has been in the direction of greater stringency. This is just what anyone, if at all observant, might have expected. Many persons were more or less shocked by the facts revealed in the first Marriage and Divorce Report. There had been a general impression that divorces were increasing, and alarm was being sounded by the churches and certain other voluntary organizations, but the facts were insufficient to constitute any basis for action. Until the first report appeared the real magnitude of the movement was unknown, hardly even suspected.

The normal reaction of the traditional mind is to combat a situation which appears to be undesirable or menacing by methods of repression, and the first resort, ordinarily, in a civil society, is to the law. It is but natural, therefore, that we should find this attitude reflected in the legislation dealing with marriage and divorce in the period following the publication of the report. So close is this connection between divorce control and legislation thought to be, that the Census Bureau, as a part of the material of the second report, included a complete digest of the laws of the States in regard to marriage and divorce as well as the various changes made in the statutes during the period 1887 to 1906.

The data for the study of legal changes in this chapter are extracted and summarized, for the first twenty-year period, from the material presented in this second Federal report. The changes in legislation for the period 1907 to 1929 in the absence of any complete compilation of legislative acts since 1907, were obtained by a careful comparison of legislation in force in 1907 with that for 1929 as set forth in Geoffrey May's *Marriage Laws and Decisions in the United States*, 1929, and in J. B. Martindale's *American Law Directory*, 1930, which present a complete digest of the legislation in all the States. Information in regard to legal causes now in operation in the several States was obtained from the recent annual Marriage and Divorce Reports.

Changes in the marriage and divorce laws are treated separately.

Changes in Marriage Laws

It is claimed on the part of many, and not without much justification, that a more careful oversight in regard to marriage, would result in fewer infractions of the marriage bond. Professor George E. Howard lays great emphasis on this point. He says: "No one who in full detail has carefully studied American matrimonial legislation can doubt for an instant that, faulty as are our divorce laws, our marriage

laws are far worse. There is scarcely a conceivable blunder left uncommitted; while our apathy, our carelessness and levity, regarding the safeguards of the marriage institution, are well-nigh incredible. We are far more careful in breeding cattle or fruit trees than in breeding men and women. Let me repeat what I have more than once written: the great fountain head of divorce is bad marriage laws and bad marriages. The centre of the dual problem of reforming and protecting the family is marriage and not divorce. One 'Gretna Green' for clandestine marriages, like that of St. Joseph, Mich., is the source of more harm to society than a dozen 'divorce colonies' like that of Sioux Falls, S. D. [more recently Reno, Nev.]. Indeed the 'marriage resort' is the fruitful mother of the 'divorce colony.' There is crying need for a higher ideal of the marriage relation; for more careful 'artificial selection' in wedlock. While bad legislation and a low standard of social ethics continue to throw recklessly wide the door which opens to marriage, there must of necessity be a broad way out."¹

A little later, while adhering to his assertion in respect to bad marriages, Professor Howard qualifies his statement in regard to the effect of bad marriage law, when he says: "It is freely admitted that bad marriage law is not the chief source of divorce. Nevertheless, it will account for the dissolution of wedlock in far more instances than will a bad divorce law. For, in reality, clandestine marriages are very often due to this cause; and clandestine marriages are very apt to terminate in divorce. Moreover, bad marriages may permit or fail to prevent the union of those who are unfit because of venereal disease, insanity, crime, or degeneracy. Thus there is a radical difference between a bad divorce law and a bad marriage law."²

We do not wholly agree with Professor Howard that "the great fountain head of divorce is bad marriage law

¹ *Publications of the American Sociological Society*, Vol. III, p. 159.

² *Ibid.*, p. 178.

and bad marriages," nor even with this modified statement just quoted. The complexity of the causes for divorce is far too great to admit of this naive rating of factors, and it places undue emphasis upon the influence of law as a corrective. We are much more inclined to the opinion that education in right attitudes toward marriage, a higher standard of marriage morals, and a constructive attack upon the social conditions which not only result in bad marriages but often destroy good ones, has far more promise of success in bringing about the desired improvement in marriage conditions than the restrictive legal method. Nevertheless, we are willing to concede for the influence of marriage law, particularly in its function of upholding standards, at least as much as he claims for divorce law when he says: "From all the evidence available, it seems almost certain that there is a margin, very important though narrow, within which the statute-maker may exert a morally beneficent, even a restraining influence."¹

In view of the widespread belief in the efficacy of law to regulate marriage it is not surprising that there should be a good many revisions of the statutes both for the purpose of improving the status of marriage and to lessen the chances of divorce.

There are many who believe that the marriage of immature persons is not only unwise physically but that it renders such unions less stable.² Between 1887 and 1906, eight States, Arizona, Illinois, Kansas, North Dakota, South Dakota, Tennessee, and West Virginia raised the "age at which minors are capable of marrying" or the "age below which parental consent is required" for both sexes. The District of Columbia, Idaho, Michigan, New Hampshire, and New York raised the age limit for females,

¹ *Ibid.*, p. 152.

² Cf. HAMILTON, G. V. and MACGOWAN, KENNETH, *What Is Wrong with Marriage*, pp. 24-25.

while Massachusetts lowered the age requiring parental consent for both parties, and Oklahoma reduced the "age of consent" for girls. Since 1906 no State has reduced these age limits while Massachusetts, New Hampshire, West Virginia, and Utah raised the age, below which persons are capable of marrying, for both sexes, and California, Minnesota, Missouri, and New Mexico, for females. The age below which parental consent is required was raised for both sexes in Georgia and Tennessee, and for females in Idaho, Maryland and Ohio. Illinois was the only State in which this requirement was lowered.

Every State code has a section devoted to "Prohibited Marriages." For the most part these prohibitions have reference to the degrees of relationship regarded as barriers to marriage. In Southern and Western States where Negroes and Orientals constitute serious race problems, the prohibitions extend quite generally to miscegenation. More recently eugenic and other social considerations are coming to be regarded as factors in the forming of "bad marriages" and these are thought also to have a direct bearing on the permanency of marriage as well.

In the first period, twelve States enacted new statutes or amended old ones on the subject of prohibited marriages. Six Western and Southern States, California, Louisiana, Mississippi, Oklahoma, Oregon and Texas, enacted laws prohibiting the marriage of white persons with Negroes or mulattoes. Four of these included Mongolians in the prohibition. Six States, Indiana, Kansas, Minnesota, New Jersey, Ohio and Wisconsin, directed their changes in legislation against the propagation of the mentally deficient.

In the second period, changes in the laws regarding prohibited marriages were more numerous and included a wider range of subjects. Thirty-one States revised their statutes in this regard. Racial barriers were raised in Alabama, Arizona, Georgia, Massachusetts, Michigan,

Missouri, Montana, Nebraska, and South Dakota. Six of these States included Mongolians, and three, Indians. In fifteen States mental defectiveness was made either a bar to marriage or a ground for rendering the marriage void: California, Delaware, Kentucky, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Tennessee, Texas, Virginia, Wisconsin and Utah. Freedom from venereal disease was made a prerequisite for marriage in Louisiana, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Vermont, Virginia, Washington, West Virginia, Wyoming and Utah, thirteen States in all. Tuberculosis was made a barrier in North Carolina, North Dakota, South Carolina and Washington; addiction to narcotic drugs in Delaware; confirmed drunkenness or drunkenness at the time of marriage in Delaware, Pennsylvania, and South Carolina. Habitual criminals are prohibited from marrying in North Dakota, Virginia, and Washington.

Apparently the only changes in marriage law intended directly to affect divorces are those restricting the remarriage of divorced persons. Eighteen States and the District of Columbia made changes in their laws in this regard between 1887 and 1906. Alabama made it unlawful for either party to marry again, except each other, following a decree of divorce until after the sixty days allowed for taking an appeal as well as during the pendency of the appeal if one is taken. California, Colorado, Illinois, and Wisconsin made the marriage of divorced persons illegal if contracted within a year from the granting of the decree. Illinois provided "that when the cause is adultery the guilty party shall not marry any other person within two years." The District of Columbia prohibited the guilty party in a divorce for adultery from marrying any other person. Idaho, Kansas, Minnesota, Oklahoma, Rhode Island, and Washington declared marriage illegal if contracted within less than six months after the former

marriage had been legally dissolved or annulled. Kansas required an additional thirty days after final judgment in case an appeal had been taken. Michigan changed its law to allow remarriages only within "such time as shall be fixed by the court, and stated in the decree, provided that such time shall not exceed the period of two years from the time such decree was granted." New York since 1905 has granted only interlocutory decrees, becoming final after a period of three months, and provided furthermore that "when absolute divorce is granted the plaintiff may marry again during the lifetime of the defendant; but a defendant adjudged to be guilty of adultery cannot marry again until the death of the plaintiff, unless the court in which the judgment is rendered modifies such judgment, which modification can only be made upon satisfactory proof that five years have elapsed since the decree of divorce was granted, and that the conduct of the defendant since the dissolution of such marriage has been uniformly good." North Carolina provided that after a divorce granted for desertion, the party guilty of abandonment could not marry during the lifetime of the innocent spouse. An amendment prohibited the marriage within five years after the decree, but a later amendment repealed this provision. In all these cases restrictions upon remarriage were more stringent than those formerly in effect.

Maine, Maryland, Montana and North Dakota are the only States which relaxed their restrictions in regard to remarriage. Maine repealed a law which prevented remarriage within two years of the final decree and not afterward except by permission of the court, leaving no obstacle to remarriage after divorce. Maryland omitted in the new code of 1888 the previous provision which prevented the remarriage of the defendant, in a divorce granted for adultery or abandonment, with any other person during the lifetime of the plaintiff. Montana repealed the provision that after divorce the innocent party

could not marry within two years and the guilty party within three. North Dakota changed its statutes so that instead of preventing the marriage of the guilty party during the lifetime of the innocent, both parties in any divorce are restricted only for a period of three months.

Since 1906 the following changes in the laws pertaining to remarriage of divorced persons appear on the statute books of six States. Four are in the direction of greater stringency and two the reverse.

No one of the three States, Arizona, Texas, and West Virginia, had in 1906 any restriction whatever against the remarriage of divorced persons. Arizona law states that neither party may marry again until after the expiration of one year, or after the determination of an appeal taken within the year. In Delaware the decree *nisi* for divorce does not become absolute for one year and neither party is permitted to remarry during that period. Texas prohibits either party from remarriage within a year following a divorce on the ground of cruelty. West Virginia enacted a law which declares that neither party to a divorce may remarry for six months after the decree, and the court may further prohibit the guilty party from marrying within a certain time not to exceed five years.

Only two States relaxed their laws in regard to remarriage after divorce and in neither case are the modifications important. New York reduced the period from five to three years after which the court may grant permission to the guilty party in an absolute divorce to remarry, and Vermont also reduced the time from three to two years after the guilty party to a divorce may remarry unless the former spouse has died in the meantime.

The main tendency in marriage legislation for forty years has been, quite obviously, in the direction of stringency. It has sought to prevent, as far as legal restraints can do so, the formation of "bad marriages" and to diminish the probabilities of divorce.

Changes in Divorce Laws

There is probably no field within the entire domain of social control, unless it is that of crime, in which the democratic theory of "a government of laws" finds more literal and more non-critical acceptance than in that of divorce. Here, as elsewhere, "There ought to be a law" is the expression of the mental reaction to any undesirable situation. No one questions, of course, the desirability, even the necessity, of the formulation of the accepted patterns of social behavior in legal codes. Creeds and constitutions give definiteness to our social institutions. But the almost universal reliance upon law to create or to maintain the approved standards and the consequent failure to grasp the nature of the forces and processes which actually underlie them and constantly modify them, is discouraging, to say the least.

Under the domination of this attitude, and of the legalistic habit of mind, it is to be expected that men composing our legislative bodies, should, under the pressure of lobbying interest groups, proceed to deal with their problems by the direct method of prohibitive legislation rather than that of the utilization of constructive and indirect methods of obtaining their objectives. The futility of this method was well stressed, long ago, by Herbert Spencer who, in speaking of the ineffectiveness and inexpediency of the legislative method of solving social problems, and speaking of the British Parliament, said: "There is scarcely a bill introduced but is entitled 'An Act to Amend an Act.' The 'Whereas' of almost every preamble heralds an account of the miscarriage of previous legislation."¹

When the divorce problem became acute in the public mind, due to the facts brought to light by the first Special Report, there followed a considerable effort on the part

¹ *Social Statics*, p. 13.

of legislatures in the several States to mitigate the so-called evil. This tendency has continued to the present time.

The changes in the divorce laws since 1886 which have direct bearing upon the divorce rate may be grouped under four headings: those which deal with notice to the defendant, provisions for defending the suit, regulations regarding previous residence, and statutory grounds.

The first and second of these concern themselves with matters of procedure, and relatively are of minor importance. In order to put a check upon hasty and irregular procedure, a considerable number of States enacted laws regarding notice to the defendant when a non-resident of the State or when the residence is unknown. These are all of the same nature and define more definitely the process by which notification is to be made. If notice is by publication the time limit usually is fixed, prior to which the action cannot proceed.

Another group of States enacted laws providing that in cases in which the defendant, after proper notice, does not appear, the court shall provide an attorney who shall represent the State in order to secure a fair and impartial hearing for the case. Vermont seems to be the only exception. Such provision already existed in that State but it was repealed in 1890.

Eighteen States between 1886 and 1906 enacted laws or revised existing ones in regard to residence requirements of those making application under their jurisdictions. In the main these acts had for their object the restriction or prevention of persons who might wish to migrate to a State where the divorce requirements were less rigid or where the ground existed upon which they sought divorce.

Georgia had no provision in regard to any specific period of residence prior to 1891. Then an act provided that the libellant must have been a bona-fide resident of the State twelve months and of the county six months before the filing of the petition. Later the six-month provision in

regard to the county was repealed. North and South Dakota each raised their requirements from ninety days to one year except that in the case of South Dakota, where the defendant is a resident, six months only was required. Arizona, California, New Mexico and Wyoming each raised their residence requirement from six months to one year. Rhode Island increased its requirement from one to two years, and the District of Columbia from two to three. Idaho changed its general requirement of six months to six years in case the action was on the ground of insanity. Later this latter provision was reduced to one year. Colorado, Michigan and Mississippi each required one year's residence of the plaintiff in the suit unless, in the case of Colorado, the cause is adultery or extreme cruelty committed in the State, and in the cases of Michigan and Mississippi unless it is an affair of a bona-fide citizen of the State, in which event the rule is suspended. Mississippi further enacted that the court shall not take jurisdiction in any case where the proof shows that a residence or domicile was acquired in the State with a purpose of securing a divorce. Florida required two year's residence except that, since 1899, a divorce may be obtained at any time if the defendant has been guilty of adultery in the State.

Four States relaxed their residence requirements but the changes are relatively unimportant. Maine made an additional exception to its one-year residence provision, "if the libellee is a resident of the State." In New Jersey the three year's residence required of either party in a divorce on the ground of desertion was reduced to two. In all other cases it is sufficient if either party resides in the State at the time of filing the petition and the defendant is served with process within the State. According to the Nebraska General Statutes in force in Oklahoma in 1890, six months' residence was required. The first legislative assembly raised this requirement to two years but the Revised and Annotated Statutes required a residence of

only ninety days. This action conflicted, however, with an Act of Congress in 1896 which declared that no divorce shall be granted in any Territory for any cause unless the party applying for the divorce shall have resided continuously in the Territory for one year next preceding application. Vermont reduced its residence requirement from two years in the State and one year in the county where the offense was committed in another State or country to one year in the State and three months in the county, but later returned to the two-year requirement in the State and six months in the county.

Since 1906 the following changes have been added: Delaware now requires two year's residence except in the case of divorces on the ground of adultery or bigamy. Formerly merely residence in the county in which the petition is filed was required. Nebraska raised the requirement from six months or from the date of marriage to the filing of complaint, to one year if the cause arose in the State and two years if it arose without. Texas changed the requirement from bona-fide residence in the State and six months in the county to one year's bona-fide residence in the State and six months in the county.

Nevada is the only State which has lowered its residence requirements. Except for those cases in which the cause occurred within the county where the action is begun, six months' residence formerly was required. In 1927 this six-months' provision was reduced to three, the lowest in any State, thereby inviting "migratory divorces" for which Reno is now famous.

Since the foregoing survey was completed we note the passage of two acts in the States of Arkansas and Idaho, respectively, the obvious intention of which is to enter into competition with Nevada for migratory divorce business.

On February 26, 1931, the general Assembly of the State of Arkansas enacted a law amending Sec. 3505 of Crawford and Moses Digest of the Statues of the State as follows:

"The plaintiff to obtain a divorce, must prove, but need not allege, in addition to a legal cause of divorce:

"*First.* A residence in the State for three months next before the final judgment granting a divorce in the action and a residence for two months next before the commencement of the action.

"*Second.* That the cause of divorce occurred or existed in this State, or if out of the State, that it was a legal cause of divorce in this State, the laws of this State to govern exclusively and independently of the laws of any other State as to the cause of divorce . . .

"This law being necessary to create the uniformity in divorce laws in the States of the Union and being necessary for the immediate preservation of the public health, peace and safety of the citizens of the State of Arkansas, an emergency is hereby declared and this law shall be in full force and effect from and after its passage."

On March 3, 1931, the Legislature of the State of Idaho passed Senate Bill 20 over the Governor's veto by a vote of 30 to 12 in the Senate and by 41 to 18 in the House.

The act follows: "That Sec. 4639 Compiled Statutes of Idaho be, and the same is hereby amended to read as follows:

"*Residence Required by Plaintiff.* A divorce must not be granted unless the plaintiff has been a resident of the State for ninety (90) days next preceding the commencement of the action."

By an act approved on March 19, 1931, the Legislature of the State of Nevada countered by amending the Nevada Compiled Laws of 1929, Sec. 9460, to read as follows:

"Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the district court of any county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, or in which the parties last cohabited, or if plaintiff shall have resided six weeks in

the State before suit be brought, for the following causes, or any other causes provided by law; . . . "

It was provided by the act that it should become effective from and after May 1, 1931.

By another act approved March 23, a new cause was added to the eight already in existence to the effect that:

"When the husband and wife have lived apart for five consecutive years without cohabitation the court may at its discretion grant an absolute decree of divorce at the suit of either party."

It was further enacted on the same date that "In any action for divorce when it shall appear to the court that both husband and wife have been guilty of wrong or wrongs, which may constitute grounds for divorce, the court shall not for this reason deny a divorce, but in its discretion may grant a divorce to the party least in fault."

These enactments by the three States of Arkansas, Idaho, and Nevada are conspicuous for their leniency in contrast with the general trend of divorce legislation for the last forty years as described above.

When we come to consider the legislation in regard to causes we find it somewhat difficult to discover any clear-cut trend. We should classify all those cases in which new causes were added or in which there is relaxation of restrictions already in existence as tendencies toward leniency. Where causes are dropped or restrictions added there is greater stringency. But some States added new causes while at the same time they omitted existing causes in code revisions or repealed others. In some instances the causes for absolute divorce which were deleted were, in reality, causes for annulment and merely were transferred to that category of statutes. In still other cases the repeal of statutory grounds indicates restrictive tendencies. On the whole there seems to be, as the total result, a wider possibility for the selection of grounds upon which divorces may be secured although, it should be observed, many of

the revisions in the direction of leniency are of minor importance.

Eighteen States, from 1887 to 1906, revised their legal statutes in such manner as might in some way or other affect the increase of divorces as follows: Idaho and Utah added insanity continuing for six and five years respectively, to their lists of causes. Florida and North Dakota enacted statutes including insanity as a cause but later repealed them. Arkansas repealed its insanity clause. Arizona added two new causes, namely, physical incompetency of either party at marriage and continuing until the filing of the suit, and wife's pregnancy at the time of marriage by a man other than her husband. The period required for divorce on the ground of willful desertion or of neglect to provide was increased from six months to two years but later was reduced to one. Habitual drunkenness of either party, a cause for divorce prior to the revision of the statutes of 1901, was reenacted. Maine, Massachusetts, Mississippi, and Rhode Island made the excessive use of opium, morphine, or other drugs a cause. Massachusetts further repealed as causes, extreme cruelty and a former act which provided that divorce should be allowed when either party has separated from the other without his or her consent, and "has united with a religious sect that professes to believe the relation of husband and wife void or unlawful, and has continued united with such sect or society for three years, refusing during that term to cohabit with the other party." Rhode Island also made separation for ten years a cause, and fixed the period of neglect necessary for divorce, not specified previously, at one year. It also added a new cause: habitual, excessive and intemperate use of opium, morphine, or chloral. Kentucky in 1893 revived a statute, omitted in the General Statutes of 1883, which made habitual drunkenness on the part of the wife of not less than one year's duration a cause of divorce for the husband. Minnesota reduced the

period of desertion required for divorce from three years to one. Montana reduced the number of causes in that State from eight to six, omitting impotency and previous marriage. The two causes relating to desertion were condensed into one and a new cause of willful neglect was added. New Jersey reduced the number of causes from five to four, omitting previous marriage and marriage within prohibited degrees of relationship, and adding as a cause, "when either of the parties are incapable of consenting, and the marriage has not been subsequently ratified." Another change was made reducing the period of desertion necessary to divorce from three to two years. New Mexico had originally three causes—adultery, cruel or inhuman treatment, and abandonment. During the period under review five new causes have been added: drunkenness of either party, impotency, neglect on the part of the husband, wife's pregnancy at the time of marriage by another than her husband, and conviction of felony followed by imprisonment. North Carolina by separate acts made felony on the part of the husband, wife's refusal to cohabit, husband's cruelty after one year, abandonment by either party for two years, causes, but later repealed all of them leaving only the four original causes. Oklahoma added four new causes to those enacted by the first territorial assembly, namely, previous marriage, impotency, antenuptial pregnancy, and fraudulent contract. Virginia reduced the period of abandonment necessary to obtain a divorce from five to three years.

Eight additional States and four of the same ones as in the earlier two decades, have amended their legislation in regard to cause since 1906. Alabama has added three new grounds: to the wife where the husband has become addicted after marriage to habitual use of morphine, opium, cocaine or other like drugs, to wife for non-support for two years, and to either party when the other has been confined in an insane asylum for twenty years. Delaware

made bigamy a cause, and reduced the period of desertion required from three to two years. Georgia increased its list of causes by including cruel treatment or habitual intoxication. Massachusetts reenacted the cause of extreme cruelty, omitted in the revision of 1902, above mentioned, and added to it, abusive treatment. New Jersey omitted physical and incurable impotence, and the one previously added in reference to incapability of consent, and added extreme cruelty, leaving three causes of divorce in that State. North Carolina reenacted a statute previously repealed on the subject of abandonment and separation. It is now continuous separation for five years. North Dakota replaced among its statutes the insanity cause formerly enacted but repealed it, as noted above, extending the period of two years to five. South Dakota added incurable, chronic mania or dementia of either spouse of five years duration to its causes. In Texas an act made it a legal ground for divorce when the parties have lived apart without cohabitation for ten years. In Wyoming an eleventh cause was established to the effect that divorce may be secured if either party is afflicted with incurable insanity and has been confined in an asylum for at least five years prior to the commencement of action. In the new code of 1929 Pennsylvania dropped the cause, "when the wife is a lunatic or *non compos mentis*," explaining that the insane spouse may be divorced on other grounds. Washington has omitted its omnibus clause which read: "any other cause deemed by the court sufficient, when the court shall be satisfied that the parties can no longer live together."

Effect of These Changes

Two generalizations may be made upon the changes in the marriage and divorce legislation just surveyed.

In the first place, they have been made, for the most part, either by States which were somewhat lax in certain aspects of their marriage and divorce laws, or by others which

sought to improve some phase of their codes upon these subjects, and the consequence has been the establishment of a greater degree of uniformity among the several States. This is notably the case in regard to the extension of previous residence requirements for the plaintiff in divorce proceedings, in respect to restrictions upon the remarriage of divorced persons, and in reference to the statutory grounds for divorce.

In the second place, there has been, on the whole, a decided tendency toward greater stringency in the legal regulations of both marriage and divorce. This has been unmistakable in every phase of the subject with the possible exception of modifications of legal grounds. The assumption, therefore, that the divorce trend is due to increasing laxity of law on the subject is not borne out by the facts.

It should be pointed out emphatically, at this point, that despite the increasing effort at legal control, and during precisely the same period, the divorce rate has gained "a fivefold velocity" and no direct connection between these two groups of phenomena can be discovered. "Still," as Professor Howard facetiously observed with his characteristic optimism, "the reformer need not despair. Without the [legal] reforms accomplished the rate might have been higher."¹

The only conclusion warranted from these considerations, therefore, is that far from being the cause of the increase of divorce, the law is not even an adequate preventive of that increase.

While the main trend of divorce appears to be entirely independent of, and undisturbed by, restrictive legal enactments aimed at its control, it is quite necessary to examine more in detail the various specific types of legislation in order to learn whether or not there are as a result occasional deviations from the general rate due to these causes. Unfortunately exact quantitative measurement in

¹ *Publications of the American Sociological Society*, Vol. III, p. 27.

most instances is impossible either because of their nature or the absence of necessary data.

No apparent influence has been exerted as a result of raising the age at which minors are capable of marrying, or "below which parental consent is required." While it is no doubt true that some marriages have been prevented in these early years it has not changed the trend as we perceive from the following table which shows that marriages in the age group 15 to 19 years are on the increase despite the popular assumption to the contrary.

TABLE XXIII.—NUMBER AND PERCENTAGE MARRIED IN AGE GROUP 15 TO 19 YEARS
IN TOTAL POPULATION

Census year	Male		Female	
	Number	Per cent	Number	Per cent
1920	96,374	2.1	596,542	12.5
1910	51,877	1.1	513,239	11.3
1900	37,781	1.0	415,682	10.9

We know from observation of course that there are classes within the population where marriage is being deferred and the age at marriage consequently is rising but the causes are not to be found in legal restrictions—they are clearly economic and social. The longer period of educational training required today for professional careers automatically postpones marriage for many. Difficulties in securing parental consent are seldom a bar to early marriage but the problems arising out of the increasing costs of living and the difficulty of maintaining a higher standard of living constitute an increasing deterrent.

An analysis of the enactments on the subject of prohibited marriage shows that they are aimed mainly at social conditions of racial and eugenic character and have little bearing on our subject. Nevertheless, it is assumed, and probably rightly, that interracial marriages are likely

to be unstable. They are, however, so infrequent relatively as to be statistically negligible. The prohibition against the marriage of persons mentally defective or afflicted with venereal disease, if genuinely effective, might present some marriages with a high probability of failure. How large a factor this would be must remain for the present a matter of conjecture.

The movement on the part of the States to restrict the remarriage of divorced persons is based upon the assumption that a large percentage of persons seek divorce in order to remarry and that by restricting remarriage the divorce rate will be diminished materially. It is conceded that a modicum of truth underlies this assumption but, as so frequently happens, the popular judgment rests upon an exaggeration of the facts. A few cases among the socially elite which are made conspicuous by extensive newspaper publicity are enough to distort the view.

Without doubt there are certain grave misapprehensions here which require consideration. The number of persons who secure divorces in order immediately to remarry is probably much smaller than commonly is supposed. To be sure there are plenty of cases in which new attachments and marital disloyalty constitute the reasons for the destruction of marriages and the party actively concerned may desire the legal break with the present spouse in order to marry the "new love" at once, leaving only the abandoned spouse in a forlorn condition, but in all other cases the demolition of marriage is so serious a tragedy in the lives of both parties, often worse than death, as to destroy for the time being all thought or desire for future alliances. No up-to-date statistics are available by which to measure these probabilities, and, furthermore, conditions may have changed in recent years, but there are two sources from which light may be obtained upon the problem.

First, in the second Marriage and Divorce Report, 1887-1906, information concerning the length of time

between separation of the couple and divorce was obtained in 780,022 cases.¹ In only 12.7 per cent of these cases was divorce secured in less than one year after separation, while 72.2 per cent ranged between one and five years and the rest above five. Even in the 12.7 per cent of cases in which divorces were obtained shortly after separation it would be illogical to assume that haste was due to desire at once to remarry. This would be to ignore many other factors such as adultery, extreme cruelty and the like, which render the legal bond intolerable and incline the offended party to immediate action.

Second, Professor Walter F. Willcox has called attention to a pertinent method of testing this phenomenon statistically. He says: "Marriages end by death or divorce. Now, it is presumable that the death of a husband or wife does not occur in any appreciable proportion of cases, as a result of the surviving partner's desire to marry again. Therefore, the interval between the death of a husband or wife and the remarriage of a widow or widower may be considered the normal interval, and any diminution of this would register the influence on divorce exerted by a present desire of remarriage."² We have no statistics for a comparative study of this sort, but in an article by M. Bertillon, "Du Sort des divorcés" published in the *Journal de la Société de Statistique de Paris*, in 1884, figures for Switzerland, where the divorce rate is fairly comparable with our own, are presented, from which the table shown on the following page is devised.

From the figures presented in this table we observe that divorced men in Switzerland were less inclined to remarry within a year or less than were widowers, and that divorced women were only slightly more inclined to do so, than were widows. Let no one suppose that this table is presented as conclusive proof that the divorce rate is uninfluenced

¹ Vol. I, p. 40.

² *The Divorce Problem, A Study in Statistics*, pp. 26-27.

by the desire on the part of many persons to form new marital unions. The *mores* in regard to remarriage in Switzerland in 1884 and in the United States in 1931 may be so different as to render this comparison void of any significance for this purpose. It is offered, however, as evidence conflicting with the hasty generalizations often made without adequate information. It would be better to suspend judgment until more knowledge is forthcoming.

TABLE XXIV.—MARRIAGE RATE OF WIDOWED AND DIVORCED

Time between end of first and beginning of second marriage	Of 1,000 widowers remarrying	Of 1,000 divorced men remarrying	Of 1,000 widows remarrying	Of 1,000 divorced women remarrying
Less than 1 year	323	300	95	194
1 year	260	255	264	282
2 years	136	155	152	166
3 years and over	281	294	489	358

Another serious misapprehension in this connection is with regard to the real significance of remarriage immediately after divorce in those cases where it does occur. Many persons are shocked at such occurrences as if the case were similar to remarriage at once—the same day for instance—upon the death of a husband or wife. A moment's reflection should be sufficient to convince any candid person that the two cases are utterly dissimilar. When one is startled, for example, by a flaring newspaper headline announcing that a certain person was divorced at twelve o'clock and remarried in the afternoon he should read down the column. If details are given he is very likely indeed to find that in the case of the divorced person, the divorce was preceded by a long period, perhaps years, of separation from the former spouse, from which the logical inference would be that the person had refrained from hasty divorce and had deferred the matter of procuring it until all hope of reconciliation had passed and new ties had been formed.

Divorce is then secured in order to dissolve legally the marriage which *de facto* had long ceased to exist and in order to enter at once into a new marital union. Stated in this form, which we believe to be fairly representative of the situation in a vast majority of instances, remarriage immediately after divorce loses its objectionable character. No one, it would seem, except those who deny the validity or desirability of remarriage under any circumstances, could hardly disapprove such procedure. In fact a very good case could be made out for the delaying of divorce as long as remarriage is not contemplated. While it is doubtless true that there are many persons whose existing marriages are broken up because of new loves and who wish to sever old ties in order to assume new ones, it certainly is true that there are many other husbands and wives who have separated and who have lived apart, perhaps for years, and who have deemed it neither expedient nor necessary to secure a divorce, who find at length that new attachments have been formed and who, not until then, have taken action to secure divorce for the purpose of legitimizing their new formed relations. In all these latter cases, whatever ratio they sustain to the former, it is probable that the chief effect of legislation prohibiting remarriage for a specified period after divorce is to hasten divorces after separation in order that persons may be free to marry should they, according to normal probabilities, desire to do so, thus tending to increase the divorce rate and to diminish thereby the possibilities of reconciliation. It seems, therefore, to some extent at least, that restrictive legislation in this regard often may produce results quite the opposite from that which is intended.

Another effect of legislation restricting either early marriage or the remarriage of divorced persons is to increase the probability of sex irregularities, the index of which, and ordinarily the only perceptible influence of such legislation, is the increase of illegitimacy, although with the

increase in the knowledge of the use of contraceptives and the more extensive facilities for producing abortions this index is less to be relied upon than formerly. The law arbitrarily can prohibit marriages and it ought to do so, and effectively, wherever the social well-being is imperiled, but it is relatively powerless to control normal human impulses except by indirect means. It is coming more and more to be a question of social expediency, not to say of practical ethics, how far the law should go in placing the seal of social approval upon sex relations known actually to exist in order that the individual may avoid the mental conflicts due to the maintenance of clandestine practices which are under legal ban. Thus we have the "companionate marriage" advocated by Judge Ben B. Lindsay and other serious-minded people, as an attempt at the solution of the problem for the younger groups. Everyone knows that most divorced persons eventually assimilate their experiences however tragic they have been, and form new matings. Those who advocate the outlawry of these normally constituted relations through restrictions against remarriage should be ready and willing to stand sponsor for the results.

We turn now to the consideration of the effects produced by modifications of divorce laws.

The effects of the first groups of changes, namely, those regarding notice to the defendant and those making provision for defense, are too remote to be discernible. If effective, they should have resulted in an increase in the proportion of cases contested and of petitions denied or left pending. No such result accrued. There was a very slight increase in the percentage of contested cases, about 1 per cent during the twenty years 1887 to 1906 but since that time there has been a steady decline, from 15.4 to 11.8 per cent in 1929. Again, notwithstanding the more adequate provision for notice to defendant when such notice is by publication, fewer cases were contested, when notice was by publication, in 1916 than in the earlier period, the

respective ratios being 2.4 and 3.2 per cent. Since 1916 there is no data.

Statistics in regard to the proportion of petitions denied or left pending from one year to another are not given in the annual reports of 1916 nor in those of 1922 to 1929. But during the period 1887 to 1906 no tendency toward increase is to be found but rather a very slight movement in the opposite direction, that is, in the earlier years about 26 per cent of applications were denied while in the later years the corresponding percentage was around 25.

A careful observation of the number of divorces granted in the year following the enactments increasing the residence requirements for the libellant in divorce proceedings in the various States, 1887-1906, reveals the following: Five of the fourteen, California, Colorado, Florida, Georgia, and Mississippi, show no decrease but, on the contrary, a normal increase in divorces and betray no traces of any effect of the changes in the law. New Mexico shows the same number for 1897 as for 1896, the year in which the law was passed. Idaho shows an increase after the passage of the law in 1895 requiring longer residence and a positive decrease after relaxing the law in 1903. A decrease followed the enactment of a law in Michigan in 1887 which required two years' residence instead of one for a cause which accrued outside the State, but the number remained stationary when this requirement was relaxed to one year again in 1895. The six States remaining show a decrease of divorces in the year following the enactments, of from 20 to 50 per cent. With the exception of North and South Dakota these losses were nearly or quite regained in the second year. This would seem to indicate, except where migration in order to obtain divorces, as had been the case in the Dakotas, was a dominant factor, that legislation of this sort may result in deferring or distributing divorces, but that it has little or no effect in diminishing them.

In the four States in which the residence requirements were relaxed there is no abnormal increase in the year following such changes.

The fact that a part of the States show no effect from the changes in the law, while others exhibit a result the reverse of that which the law was intended to secure, serves to render untrustworthy any generalizations based upon apparent correlations between the changes in the law and the divorce rates in the remaining States. It is too apparent that factors other than changes in the law were dominant.

Annual divorce statistics are not available since 1906 by which to test the results of the changes in similar laws in the various States with the exception of Nevada. Reno has been noted as a "divorce colony" for many years because Nevada did not fall into step with other States in revising upward its residence requirement. But when, on the contrary, in 1927 the already low requirement of six months was reduced to three, the change, as evidently was contemplated, attracted considerable attention, especially in Eastern States, and lured to Reno many persons seeking divorce upon grounds not available in their own States, so that the rate approximately doubled for the State in the first year following the change. The rates are: 1916, 6.07; 1922, 13.25; 1926, 13.19; 1927, 25.23; 1928, 33.52; 1929, 28.13. No one could question the influence of law in this instance, but the situation is peculiar. The further reduction in the residence requirements on March 19, 1931, from three months to six weeks doubtless will increase the rate. Similar results are likely to accrue in the States of Arkansas and Idaho as a result of their reductions of similar requirements.¹

Even if we assume that law is effective in regulating divorces, which in general we find to be very doubtful, still it could hardly be expected to show much in the way of results in this connection owing to the misapprehension

¹ Cf. *supra*, pp. 165-167.

as to the magnitude of the phenomenon at which restrictive legislation is directed, namely, migratory divorces. As long ago as the publication of the first Marriage and Divorce Report, Dr. Carroll D. Wright showed that only 19.9 per cent of divorces were secured in States other than those in which the couples were married, and while all migratory divorces are included in this percentage, it can hardly be assumed that they were all of that type in view of the fact that in 1880, 22.1 per cent of all native-born persons in the whole population were living in States other than those in which they were born. These two sets of figures of course are not wholly comparable, because in the case of the general population the migration to other States includes the whole period from birth, while in the case of married couples it includes merely the period since the date of marriage. What the comparison does show is that there are many other reasons for movement from one State to another, sufficient to move one person out of five on the average, and that only a part of the migration of married couples can therefore be attributed to the desire to secure divorces. Had we the information as to what percentage of all married couples are now living in States other than those in which they were married the differential would be more significant. The actual number of migratory divorces, is, therefore, probably much smaller than generally has been assumed.

The figures for the second report and for 1900, none later being available, corresponding to those given above for the first report and for 1880 are respectively 21.5 and 20.7 per cent. This would seem to indicate a greater tendency in married couples to migrate. This may be explained by a variety of reasons, but if it is assumed that much of it is for the purpose of obtaining divorces, then to that extent we should have further proof that the restrictive legislation in order to prevent migration for that purpose has proved ineffectual.

We have yet to consider the question of the effects of changes in legislation in regard to cause. In the first place, we should reemphasize the fact that the legal grounds on which divorces are granted throw little light upon the real causes of marriage dissolution. Divorces in the main are secured upon the grounds existing in the State of

TABLE XXV.—NUMBER OF CAUSES FOR DIVORCE COMPARED WITH DIVORCE RATES, 1929

State	Number of causes ¹	Divorce rate per 1,000 of the population ²	State	Number of causes	Divorce rate per 1,000 of the population
Alabama.....	10	1.37	Nebraska.....	7	1.26
Arizona.....	9	2.53	Nevada.....	8	28.13
Arkansas.....	7	2.67	New Hampshire..	11	1.49
California.....	6	2.74	New Jersey.....	3	0.75
Colorado.....	9	2.33	New Mexico.....	8	1.91
Connecticut.....	9	0.77	New York.....	1	0.41
Delaware.....	8	0.73	North Carolina...	7	0.55
Dist. of Col.....	1	0.24	North Dakota....	7	0.83
Florida.....	9	2.64	Ohio.....	10	2.33
Georgia.....	9	0.84	Oklahoma.....	10	3.48
Idaho.....	7	2.33	Oregon.....	7	3.38
Illinois.....	9	2.09	Pennsylvania.....	8	0.82
Indiana.....	7	2.54	Rhode Island....	8	1.10
Iowa.....	5	1.79	South Carolina...	0	0.00
Kansas.....	10	2.20	South Dakota....	7	1.13
Kentucky.....	11	1.77	Tennessee.....	11	2.00
Louisiana.....	10	1.04	Texas.....	5	3.20
Maine.....	6	1.59	Utah.....	8	2.01
Maryland.....	6	1.30	Vermont.....	6	1.13
Massachusetts...	7	0.84	Virginia.....	8	1.27
Michigan.....	8	2.52	Washington.....	10	2.90
Minnesota.....	7	1.12	West Virginia....	8	1.17
Mississippi.....	11	1.58	Wisconsin.....	8	0.92
Missouri.....	9	2.72	Wyoming.....	11	3.15
Montana.....	6	2.77			

¹ From Report of 1929, pp. 27-30.

² From Report of 1929, p. 17.

residence, although there are doubtless exceptions in States like South Carolina, New York, and in the District of Columbia. The usual procedure is to furnish evidence, real or fictitious, upon the ground most suitable to custom or to personal inclination. It is reported that in New York the situation has resulted in the rise of a new remunerative occupation, that of the professional "co-respondent" through which the necessary evidence is provided upon the one statutory ground.

One proof of these assertions is shown by the fact that there is little or no apparent relation between the number of causes in the several States and their respective divorce rates, as exhibited in the table shown on page 181.

By rearranging this table in the order of frequency in both the number of grounds and also in the divorce rates this lack of correspondence between these two sets of figures is made more conspicuous:

TABLE XXVI.—ORDER OF FREQUENCY OF CAUSES COMPARED WITH FREQUENCY IN RATES, 1929

Number of causes	Number of states	Corresponding rates per 1,000 population
11	5	1.49, 1.58, 1.77, 2.00, 3.15
10	6	1.04, 1.37, 2.20, 2.32, 2.90, 3.48
9	7	0.77, 0.84, 2.09, 2.33, 2.53, 2.64, 2.73
8	10	0.73, 0.82, 0.92, 1.10, 1.17, 1.27, 1.91, 2.01, 2.53, 28.13
7	10	0.55, 0.83, 0.84, 1.12, 1.13, 1.26, 2.33, 2.54, 2.67, 3.38
6	5	1.13, 1.30, 1.59, 2.74, 2.77
5	2	1.79, 3.20
4	0	0.00
3	1	0.75
2	0	0.00
1	2	0.24, 0.41
0	1	0.00

A few of the sharpest contrasts especially should be noted. In each of the groups of States having 9, 8, and 7,

causes respectively we find relatively both the highest and the lowest rates. Texas, with five causes, far below the average number, has a rate exceeded by only three other States. Connecticut, Georgia, Pennsylvania, Wisconsin, and North Dakota with 9, 9, 8, 8, and 7 causes respectively have approximately only double the rate of New York with one cause, and little in excess of the rate in New Jersey with three causes.

The question remains as to how far such laxity as we found in the legislation regarding the expansion of causes may have stimulated the divorce movement. Here the fallacy of attaching any importance to the correspondence between changes in the law and the increase in divorces is susceptible of statistical proof. Professor Willcox makes the following pertinent observation: "A change in the law is found to coincide with a change in the total divorces for the State, and the two are forthwith correlated, regardless of the fact that very few changes in the law can have affected all causes of divorce equally. To establish a connection between the two as even probable, the change in the number of divorces must be shown to occur solely or mainly in the classes affected by the law. A statute making habitual drunkenness a ground of divorce may be attended by an increase in the total, but the two facts are not proved to stand in relation, until the increase is shown to be solely or largely in divorces granted for drunkenness. A law shortening the requisite period for desertion cannot have increased the divorces for adultery, nor can a law making cruelty a cause have increased the divorces for desertion."¹ Employing this method of comparison, we have exhibited in the following table the results following the introduction of new causes or the extension of those already in existence for the five years immediately following such changes in twelve of the eighteen States

¹ *Op. cit.*, p. 48.

TABLE XXVII.—CHANGES INTRODUCING CAUSES

State	Cause	Year introduced	Total divorces*	For specified cause†
Idaho.....	Insanity	1895	134, 139, 129, 162, 136	1, 0, 1, 0, 1
Utah.....	Insanity	1903	350, 410, 355, 387,	3, 2, 2, 2
Florida.....	Insanity	1901	499, 545, 589, 659, 752	1, 2, 3, ‡
North Dakota....	Insanity	1899	386, 202, 174, 193, 265	4, 3, 8, ‡
Maine.....	Intoxication from use of opium or other drugs	1899	795, 807, 791, 911, 951	116, § 117, 114, 124, 127
Massachusetts....	Intoxication from use of opium or other drugs	1899	764, 663, 807, 810, 1,181	77, § 81, 100, 106, 153
Mississippi.....	Excessive use of opium, morphine, and other drugs	1892	497, 544, 557, 640, 981	0, 0, 0, 0, 0
Rhode Island.....	Excessive use of opium, morphine, or chloral	1896	359, 373, 409, 420, 484	1, 0, 2, 1, 0
Kentucky.....	Drunkenness of wife	1893	1,286, 1,326, 1,434, 1,500, 1,619	7, 2, 1, 4, 1
New Mexico.....	Drunkenness and neglect	1887	57, 46, 59, 72, 84	0, 1, 0, 0, 0
New Mexico.....	Impotency, antenuptial pregnancy, conviction of felony	1901	153, 167, 192, 181, 212	0, || 4, 4, 4, 2
Oklahoma.....	Previous marriage, impotency, antenuptial pregnancy, fraudulent contract	1893	180, 262, 356, 490, 302	0, ¶ 0, 1, 7, 1
Montana.....	Willful neglect	1895	273, 244, 319, 319, 387	2, 16, 26, 26, 40

* The figures are for five consecutive years beginning with the year in which the new cause was introduced.

† Number of divorces granted for specified cause in the same years.

‡ Law repealed.

§ In this state intoxication was extended to include intoxication from opium and other drugs. No separate statistics were given for the intoxication from drugs. The figures given are for intoxication.

|| No divorces were granted for impotency or antenuptial pregnancy. The figures are for felony or wherever combined with other causes.

¶ No divorces were granted for previous marriage. Figures are for all other causes, even where specified causes were combined with other causes.

in which at all significant changes were made. If any results accrued they undoubtedly would have been registered within that period.

A scrutiny of this table reveals the fact that in not a single instance is there the slightest suggestion that the divorce rate in any State has been influenced materially by the introduction of new causes. At first glance one might regard Maine and Massachusetts as exceptions. But in those States no separate statistics were given for intoxication from other drugs, the figures being simply for intoxication. Based upon the experiences of Mississippi and Rhode Island where such figures were given there is no reason to suppose that in Maine and Massachusetts intoxication from drugs other than alcohol constituted any considerable proportion of the total divorces for intoxication. Since the effect of repealing or otherwise reducing causes is of still less consequence, the slight changes made in these regards in no way affecting the general rate, it has not been deemed worth while to present the figures here. Also, because of the absence of annual statistics for much of the period since 1906 the same method cannot be applied to the changes in similar legislation since that date. There is not the slightest reason to suppose, however, that were such a study possible any other result would be disclosed.

At the conclusion of his very extensive survey of the effects of legal changes during the period covered by the first Special Report on Marriage and Divorce 1867-1886, Dr. Willcox expressed his views in the following statements: "It must be admitted that the influence of law, if not nil, is at least much less than commonly supposed," and again, "The conclusion of the whole matter is that law can do little. Agitation for the change in the law may educate public opinion. It may even be the most efficient and powerful means of education. Such effects no statistics can measure . . . but the immediate, direct and measurable influence of legislation is subsidiary, unimportant, almost

imperceptible.”¹ From the facts submitted for the period since the first report we must conclude that this judgment needs no modification or correction.

The analysis of specific effects of definite legislation merely substantiates, therefore, our general conclusion as to the effect of legislation as a whole.

¹ *Ibid.*, pp. 55, 61.

CHAPTER EIGHT

MOVEMENTS FOR UNIFORM MARRIAGE AND DIVORCE LAWS AND FOR THE FEDERAL AMENDMENT

ANOTHER PHASE OF THE GENERAL SUBJECT OF LAW IN relation to marriage and divorce is subsumed under the title of this chapter. The very great diversity of laws among the States so clearly revealed in our survey in the previous chapter, has been from the beginning of our national history one of the outstanding characteristics of our legislation on these subjects. Because the matter has aroused so much public interest and so much effort to secure greater uniformity has been expended, and because it bears such close connection with the phases of the subject already considered, it seems desirable to include its analysis and evaluation here.

Among the earliest reactions to the dawning knowledge of increasing divorce was the agitation for a Federal law to control the situation. As a matter of history it was the lack of adequate specific information upon which to base an effective appeal for such a law that led the National League for the Protection of the Family, then known as the New England Divorce Reform League, under the able leadership of its secretary, the Rev. Samuel W. Dyke, to begin its agitation for a Federal investigation of marriage and divorce which resulted ultimately in the First Federal Report.

The method of procedure has assumed two distinct phases: that of endeavoring to secure uniformity through the cooperation of the States in the enactment of uniform

laws and that of the urgency of an amendment to the Federal Constitution and the adoption of a marriage and divorce bill which shall be uniform throughout the United States.

Uniform Divorce Laws

The movement began by the drive for the latter of these two alternatives. The opinion commonly held was that the greatest evil was the result of migrant divorces which were estimated to be as high as nine-tenths of the total number and that the only solution of the difficulty was the adoption of a uniform Federal law. Dr. Dyke, with a few others, held the contrary opinion and foresaw that such uniformity, far from controlling the situation, might be secured, because of the diversity of attitudes and conditions in the different States, at the cost of an actual increase of divorces in the country as a whole.

The positive position taken by Dr. Dyke, supported by the arguments of W. L. Snyder in his book, *The Geography of Marriage*, created a distrust of the possibilities of a Federal constitutional amendment as a means of controlling the divorce increase, and effort for the time being was turned in another direction.

Accordingly the attention of the American Bar Association was called to the matter in 1889 and sympathetic interest at once was secured. In the meantime the State Legislature in New York already had appointed a special commission to coöperate with similar commissions from other States to secure uniformity in legislation on various subjects, including marriage and divorce. The American Bar Association favored the New York plan of State commissions on uniform legislation and urged their establishment. Altogether about thirty-five such commissions were appointed by the various States. Several uniform bills were drafted by these commissions, among them one on uniform-

ity on divorce procedure, it being found inexpedient to deal at that time with statutory grounds or with other matters.¹

On January 30, 1905, President Theodore Roosevelt, having been importuned by Dr. Dyke and the Interchurch Committee on Marriage and Divorce, sent a special message to Congress requesting that a second investigation on marriage and divorce be made in order to bring the figures of the former report up to date. In that address he expressed his interest in uniform legislation as follows: "The institution of marriage is of course at the foundation of our social organization, and all influences that affect that institution are of vital concern to the people of the whole country. There is a widespread conviction that the divorce laws are dangerously lax and indifferently administered in some of the States, resulting in a diminishing regard for the sanctity of the marriage relation. The hope is entertained that coöperation amongst the several States can be secured to the end that there may be enacted upon the subject of marriage and divorce uniform laws, containing all possible safeguards for the security of the family."²

The initiative in an effort to carry out the President's suggestion was taken by Governor Samuel W. Pennypacker of Pennsylvania. At his request, by an Act of the General Assembly of the Commonwealth of Pennsylvania, approved March 16, 1905, the Governor was authorized to appoint a commission to codify the laws relating to divorce, and to coöperate with other States in securing uniformity in divorce legislation in the United States, and, further: "To communicate with the Governors of the several States of the Union, requesting them to coöperate in the assembling of a Congress of Delegates, to meet at Washington in the near future, for the purpose of examining, considering and discussing the laws and decisions of the

¹ Cf. *Annual Report, The National League for the Protection of the Family*, 1905.

² *Report from the Pennsylvania Commission on Divorce*, pp. 89-90.

several States upon the subject of divorce, with a view to the adoption of a draft of a general law to be reported to the Governors of all the States, for submission to the Legislatures thereof, with the object of securing, as nearly as possible, uniform statutes upon the matter of Divorce throughout the Nation."¹

In response to this invitation of the Governor of Pennsylvania, the Congress convened in Washington, D. C., on February 19 to 22, 1906. Forty-two States and Territories were represented by more than one hundred delegates. This plan had the advantage over the previous organization of special commissions to deal with uniformity in legislation in general, because it concentrated its attention on divorce alone, instead of distributing its efforts among a variety of subjects. Continuity was preserved, however, through the appointment by Governor Pennypacker and many other governors, of members of the old commissions as delegates to this Congress.

Perhaps no better statement of the purpose and motive of the Congress, as understood by the delegates, could be made than that contained in the opening paragraph of the address presented by the Committee on Resolutions: "The great and constantly increasing number of divorces in the United States has aroused a general public interest, which has resulted in a wide-spread movement for their restriction. As one result of the discussion of this subject, there is a well-founded belief that a part of this increase in divorces, attended with special evils and scandals, is due to the lack of a divorce law uniform throughout the nation."²

By dint of arduous and protracted labor the Pennsylvania delegation had prepared a series of resolutions embodying the results of a careful examination and comparison of the divorce statutes of the several States. The Congress, after

¹ *Ibid.*, p. 1.

² *Ibid.*, p. 89.

candid discussion and with some amendments, adopted the resolutions of the Pennsylvania delegation, which, as finally revised, are as follows:

"I. As to Federal Legislation

"1. It is the sense of the Congress that no Federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile.

"II. As to State Legislation

"1. All suits for divorce should be brought and prosecuted only in the state where the plaintiff or defendant had a *bona fide* residence.

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

"When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of the complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

"3. Where jurisdiction for absolute divorce depends upon the residence of the plaintiff, not less than two years' residence should be required on the part of the plaintiff who has changed his or her state domicile since the cause of divorce arose.

"Where jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years' residence should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose.

"4. An innocent and injured party, husband or wife, seeking a divorce, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist.

"5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offences by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation; and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statutes. Uniformity in this branch of the law is much to be desired; but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited.

"6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa* seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for:

"A. Causes for Annulment of the Marriage Contract.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

“B. Causes for Divorce—*a.v.m.*

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Wilful desertion for two years.
6. Habitual drunkenness.

“C. Causes for Legal Separation, or Divorce—*a.m.*

1. Adultery.
2. Intolerable cruelty.
3. Wilful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.

“7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the states of the Union, or in a Federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

“8. A decree should not be granted *a.v.m.* for insanity arising after marriage.

“9. In those states where desertion is a cause for divorce it should never be recognized as a cause unless it is wilful and is persisted in for a period of at least two years.

“10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice brought home to him to have his day in court, when his residence is known or can be ascertained.

“11. Any one named as co-respondent should in all cases be given an opportunity to intervene.

“12. Hearings and trials should always be before the court, and not before any delegated representative of it;

and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court, actively to defend the case.

"13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent.

"14. A decree dissolving the marriage tie so completely as to permit the remarriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

"15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous marriages or the impossibility of access of the husband has been proved.

"16. Each state should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: 'If an inhabitant of this Commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this Commonwealth, a divorce so obtained shall be of no force or effect in this Commonwealth.'

"17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code."¹

After the adoption of these resolutions, and prior to adjournment, the Congress directed the general Committee on Resolutions to prepare a draft of a uniform statute embodying the principles set forth in the above declarations. This "Draft of Uniform Law" prepared by the committee was submitted to the adjourned session of the Congress which met in Philadelphia, Pa., November 13,

¹ *Ibid.*, pp. 3-8.

1906, and with a few minor amendments was adopted almost unanimously.¹ Commenting on the nature of the proposed Uniform Statute the committee says: "As first prepared, this draft was intended to be a complete statute on the subject of Divorce, covering questions of pleading and procedure fully, but it was found that, owing to the diversity in the various states, it would be impracticable to secure legislation of a uniform character, relating to procedure and pleading. It was, therefore, decided to confine the scope of the proposed law to questions of jurisdiction, publicity of hearings, protection of absent defendants, bar to speedy remarriages, the effect of foreign decrees, and the evasion of the laws of any State.

"It must be understood, that while the statute as submitted by the Committee enumerated certain causes for Divorce, these causes were not *recommended* either by the committee or by the Congress, it being understood that each State would deal with the question of causes in accordance with the sentiment of that State. Those enumerated represent the prevailing sentiment in a large majority of the States."²

A further resolution, not a part of the proposed law, but still an important action of the Congress, was passed at the Washington session:

"WHEREAS, The annual collection and publication of marriage and divorce statistics of the several states would materially aid in the study and solution of the divorce problem, and

"WHEREAS, Only eleven of the states now provide for such collection and publication, be it

"Resolved, That this Congress adopt a draft of a proposed general law for the annual collection and publication of such statistics, which law shall be reported by the Secretary

¹ For full text of the proposed Uniform Statute see *The Report from the Pennsylvania Commission on Divorce*.

² *Ibid.*, pp. 9-10.

of this Congress to the Governors and respective delegates to this Congress of all the states and territories of the United States for submission to the legislatures thereof, with the object of securing as nearly as possible uniform statutes upon the subject."¹

The action of this Congress is presented somewhat at length as a typical example of the effort at legal control. The proposed law, however, was a digest or unification of existing enactments, rather than an effort to frame an ideal statute. It was, as suggested, "but a form upon which to build a full and complete Divorce Law." The Congress had concern for what might be secured in the way of uniformity which would register a distinct gain, rather than to propose a utopian program of divorce reform impossible of present attainment, however ultimately desirable such a program might be.

The immediate results of the Congress were regarded by the Pennsylvania Commission as "extremely gratifying and satisfactory." Elsewhere they were heralded as great steps in the progress of divorce reform. Many persons characteristically identify the passage of a resolution or a law with the accomplishment of the end in view. Later results have proved less propitious than at first was expected. The bill prepared by the Congress was adopted with slight revision and after some delay by three States, Delaware, New Jersey, and Wisconsin. It was presented to the Legislatures of several other States but failed of passage in one or both houses. Legislators in general seemed to be under the delusion that the bill was meant to be enacted or rejected as a whole. Such was not the intention of its framers as we know. The sponsors of the bill would have been glad to have seen the States enact as many of its provisions into their laws as seemed feasible in the interest of increasing uniformity rather than to have had them take no action at all.

¹ *Proceedings of the National Congress on Uniform Divorce Laws*, p. 222.

Interest has waned, and since the two or three years immediately succeeding the action of the Congress little has been heard of the matter. Slight progress has been made in twenty years in the direction of uniformity in divorce legislation by the action of individual States. In uniform marriage legislation, however, some results have been achieved. The Marriage License Act and the Marriage Evasion Act proposed by the Commissioners on Uniform State Laws in 1911 and 1912 respectively, have each been adopted in whole or in part by several States.

The Federal Amendment

We noted above how the movement for uniformity began with the advocacy of a Federal amendment. As early as the session of 1884 and for several others following, proposals for a Federal amendment authorizing the National Congress to enact a uniform marriage and divorce law were considered in committees but were not reported out. There were, however, many opponents of the plan, probably the most effective of whom was Mrs. Elizabeth Cady Stanton, an associate and co-worker with Miss Susan B. Anthony. Mrs. Stanton published an article in *The Arena* for April, 1890, in which she said: "As we are still in the experimental stage on this question, we are not qualified to make a perfect law that would work satisfactorily over so vast an area as our boundaries now embrace . . . Local self-government more readily permits of experiments on mooted questions which are the outcome of the needs and convictions of the community. The smaller the area over which legislation extends, the more pliable are the laws. By leaving the States free to experiment in their local affairs, we can judge of the working of different laws under varying circumstances, and thus learn their comparative merits . . . [otherwise] the whole nation might find itself pledged to a scheme that in a few

years would prove wholly impracticable."¹ The Washington Congress on Uniform Divorce Law in its first resolution took emphatic stand against the feasibility of a Federal amendment and practically ended for the time being the prosecution of this policy.

With the comparative failure of the Uniform Law plan, the proponents of the Federal amendment idea resumed their activities. In 1911 the Legislature of California adopted a joint resolution advocating a constitutional amendment "regulating the subject of marriage and divorce throughout the United States."² In 1915 Representative G. W. Edmonds of Pennsylvania introduced into the House a similar resolution. Some of the most ardent advocates of Federal action entertained fears that the States having few causes for absolute divorce would regard the law proposed as a lowering of standards. As a result the original form of the resolution was amended to read as follows: "Congress shall have power to establish and enforce by appropriate legislation uniform laws as to marriage and divorce; provided that every State may by law exclude, as to its citizens duly domiciled therein, any or all causes for absolute divorce in such laws mentioned."³ In this modified form the resolution was presented to Congress in 1917 and, again, by Senator A. A. Jones of New Mexico, in 1919 being familiarly known as the Jones Bill. This bill was not reported out of committee.

Meanwhile new friends of this method of dealing with the situation were becoming active. *The Pictorial Review* of New York championed the cause of the Federal amendment and made it the subject of an active campaign for many months under the personal direction of Mrs. Genevieve Parkhurst, contributing editor. The General Federation of Women's Clubs in its biennial convention held at

¹ Quoted by RICHMOND, MARY, E., and FRED S. HALL, *Marriage and the State*, p. 190.

² Cf. RICHMOND and HALL, *ibid.*, pp. 190-191.

³ *Ibid.*, p. 191.

Chautauqua, New York, in June, 1922, endorsed the movement. In coöperation with the *Pictorial Review*, the General Federation enlisted the services of Mrs. Edward Franklin White, Deputy Attorney-General of Indiana and chairman of the legislative committee of the Federated Clubs, to draft the enabling act and the Uniform Marriage and Divorce bill. The executive committee of the General Federation of Women's Clubs waited upon Senator Albert Capper of Kansas, in Washington, and secured his interest and coöperation as spokesman for the bill. The joint resolution proposing an amendment to the Federal Constitution, as prepared by Mrs. White, was introduced by Senator Capper in Congress in January, 1923. It was known as the Capper bill and read as follows: "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislature of three-fourths of the several States:

" *Article*

"The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce, the legitimation of children, and the care and custody of children affected by annulment of marriage and by divorce."¹

At a public hearing before a subcommittee of the Committee on the Judiciary of the Senate on January 11, 1924, Senator Capper declared that he had besides the endorsement of the General Federation of Women's Clubs, that of The National Congress of Parent-Teachers Associations, The National Federation of Business and Professional

¹ Marriage and Divorce, *Hearing before a Subcommittee of the Committee on the Judiciary, United States Senate, Sixty-eighth Congress, First Session*, p. 1.

Women, The Women's Christian Temperance Union, and the American Association of Home Economics. In addition there was read at the hearing the action of the Thirty-Second Continental Congress of the Daughters of the American Revolution endorsing the amendment.

The Capper bill with minor revisions has been reintroduced into Congress in the sessions of 1925, 1927, 1928, and 1930. The revision of the bill in 1928 left to the several States the power to legislate "concerning the relation between persons of different races." To that extent, at least, it abandons the advocacy of uniformity.

The proposed Uniform law contains thirty-eight sections, thirty-one of which are devoted to marriage and seven to divorce. While not comparable either in scope or detail with that proposed earlier by the Pennsylvania commissioners of the Congress on Uniform Divorce law, and therefore less likely to meet with objections on the part of individual States, it is sufficiently comprehensive for a general law. It contains many enlightened provisions for the standardizing of marriage and divorce. With regard to marriage the chief provisions are: application for license two weeks in advance and interim posting of notice; presence of both contracting parties at the time license is issued; at least two competent witnesses to the ceremony beside the officiant; proper registration of the marriage; prohibition against the marriage of males under the age of eighteen and of females under sixteen, or without properly certified parental consent if under twenty-one and eighteen respectively; prohibition of the marriage of persons who are insane, imbecile, pauper, epileptic, feeble-minded, or afflicted with tuberculosis or a venereal disease, or who are related within prohibited degrees, or who are of a different race; legitimizing of offspring by marriage of the parents. "A marriage contracted in one State in conformity with the provisions of this act shall be recognized as a legal marriage in every other State."

The sections dealing with divorce provide that divorces may be decreed for the following causes and for no other: (1) adultery, (2) cruel and inhuman treatment, (3) abandonment or failure to provide for a period of one year or more, (4) incurable insanity, (5) conviction of an infamous crime; the defendant must be served with notice personally if possible, but if a non-resident of the State by publication strictly specified; in the absence of proper defense the prosecuting attorney of the judicial district must defend the suit on behalf of the State; trial shall not be had within sixty days of the filing of the suit; all divorces shall be interlocutory and shall become final only after the lapse of a year, and until the decree becomes final neither party may marry another; in providing custody for children the court shall favor the claims of the mother if she is mentally and morally competent, but either parent may have access to the children and either may be required to contribute to their support according to ability. No period of residence in the State prior to application for divorce is stipulated in the bill. "A divorce decreed in one State by a court having jurisdiction thereof, shall have full effect in every other State."¹

Arguments for and against the Federal Amendment

It is not possible to review here the voluminous literature produced as a result of this proposed amendment to the Constitution. Proponents and adversaries have supported their respective views with considerable ardor. One can discern in many arguments both pro and con the influence of the century-old conflict over centralization of authority versus State's rights.

It appears that the bill was originated and is sponsored in the main by conservatives who regard divorce as an evil *per se*. Throughout the arguments of the advocates, therefore, there is the assumption, tacit or expressed, that

¹ For full text of the bill, see *Pictorial Review*, February, 1923.

divorces, as such, should be controlled and if possible reduced, in the interest of greater marriage and family stability, and that this is the best means of accomplishing this purpose. Such persons are more inclined to put their trust in measures of legal repression than in constructive efforts to remove the causes and conditions which give rise to divorces. In this, if our generalizations in the preceding chapter in regard to the effects of law are well founded, they are likely to be disappointed.

When the constitutional amendment issue was raised in the early days, Mrs. Elizabeth Cady Stanton, one of the greatest champions of feminism, warned American women that the movement was inspired by persons who regarded our divorce laws as too liberal and who sought under the guise of making them "uniform" to make them "narrow" and that the amendment was not the best method of solving the problem.¹ It is probable that the extensive endorsement of the measure on the part of numerous women's organizations at the present time is due in great measure to propaganda among them and to the normal emotional reaction of women generally against a situation believed or plausibly asserted to be inimical to the welfare of the home and of children, rather than to scientific or critical study as to how such conditions may be improved.

A careful analysis of the discussions on the subject reveals the presence of two distinct but closely allied issues. First there is the question of the desirability of greater uniformity—the old issue behind the movement for concerted action in legislation on marriage and divorce among the States. Second, whether, because of the comparative failure of that scheme, the Federal amendment and the creation of a Federal law is not the most feasible if not the only possible method of bringing about this desired uniformity. Because these two issues are not separated clearly in the arguments and because the former are dependent on

¹ Cf. JOHNSON, JULIA E., *Selected Articles on Marriage and Divorce*, p. 275.

the latter in the minds of the proponents of the amendment plan, we have not attempted to disentangle them but have treated them together.

The crux of the Federal amendment issue is the diverse status of married and divorced persons and of children, created by their removal from one jurisdiction to another. Marriage is a civil contract but it differs from other contracts in that it creates a status, and because it does so, may neither be entered into nor dissolved at will except by compliance with laws and procedures laid down by the State of residence.

Mrs. Edward Franklin White comments on this subject as follows: "While it may be said that a State should have the right to fix its own qualifications for the entrance into any contract, yet when those qualifications enter into the validity of the contract, and the contract creates the civil status of a married pair and their children, who may be citizens of one State today and of another tomorrow, it may be doubted whether the several States should have the right to create a status, or require qualifications not recognized by every other State. The State may not so much as regulate the hand-holds of a box-car, if that box-car runs on a railroad engaged in interstate commerce, because interstate commerce is one of the three things on which Congress may enact uniform laws for use in the States.

"The contract of marriage should be a matter of interstate comity and commerce as much as a contract for the sale of commodities, or freight rates, or the white slave traffic. Citizens of the United States when moving from State to State take their civil rights with them. A married pair should be able to take their civil status in one State to any other State, especially when that status establishes their position as upright citizens instead of bigamists, or adulterers, and clothes their children with legitimacy or illegitimacy.

"But this is not true in the United States, and a married pair may find themselves violators when they leave the situs of their marriage and travel to another State which does not recognize their marriage, or their divorce, or their remarriage. To express it in a pun, their united state may not be recognized in all the United States."¹

It might be thought that the full faith and credit clause in our Federal Constitution, Article IV, Section I, would cover this situation, but in the case of *Haddock v. Haddock*, 201 U. S., 562, the Supreme Court of the United States ruled that this constitutional provision does not apply. The case and decision are as follows: Mr. Haddock abandoned his wife in New York State and went to Connecticut. There after some time he secured a divorce from her. Later Mrs. Haddock sued for divorce from him under New York laws. "Defendant replied, setting up the divorce in Connecticut, and the attorneys urged that the provision of the Federal Constitution that full faith and credit shall be given the decrees of the courts of any State in every other State, guaranteed the recognition of his Connecticut divorce in New York." The court did not uphold him and it was carried to the Supreme Court of the United States which ruled: "If one government, because of its authority over its own citizens, has the right to dissolve the marriage tie as to the citizen of another jurisdiction, it must follow that no government possesses as to its own citizens power over the marriage relation and its dissolution. If the full faith and credit clause of the Constitution were recognized as to marriage and divorce it would destroy the State's power over them, and the United States would be powerless to repair the evil, for it has no delegated authority on the subject. This must be regarded as an exception."²

¹ 49, *New Jersey Law Journal*, 1926, pp. 215-216.

² *Hearing before a Sub-committee of the Committee of the Judiciary, United States Senate, Sixty-eighth Congress*, p. 13.

It is submitted, therefore, that a Federal amendment is the only available means of solving this problem, and the claim has not successfully been answered by the opponents.

Advocates of the amendment present in addition to their main contention a long list of arguments mainly devoted to the desirability of uniformity among which the following are regarded as of chief importance:

Because of the existence of forty-nine varieties of marriage and divorce laws, and because of the failure of the States to interest themselves in uniformity and to adopt such measures as are necessary to correct obvious evils growing out of such diversity, a Federal law is imperative.

The centralizing of power in the Federal Government would avoid the occurrence of legal entanglements in regard to inheritance and other property rights consequent upon interstate migration of divorced persons and the redetermination of their legal status.

It would prevent the evasion of good and wholesome laws enacted by the more progressive States by putting an end to emigrant divorces, particularly on the part of persons of wealth and leisure, which constitutes a national scandal.

It would lead to a greater respect for law, a consideration eminently desirable at the present time, since whenever a person migrates to another State for the purpose of contracting a marriage or of securing a divorce which would be illegal in his own State he is in fact violating that law with impunity. This makes a mockery of the law.

It is pointed out that even if the forty-eight jurisdictions should adopt uniform laws in order to correct the glaring evils attendant upon our present diversity, a doubtful probability, there always would be a forty-ninth which would profit financially by remaining an exception and would constitute a divorce "Mecca" for those who would avoid the control of meritorious restrictions.

Since the States have been willing to vest a portion of their sovereignty in the Federal Congress in order to mitigate the evils of bankruptcy through Federal legislation they ought to be willing to do the same in order to safeguard the home by eliminating many of the even more serious social wrongs growing out of our conflicting marriage and divorce laws. We cannot justify the placing of property interests and rights above those involving human happiness and well-being.

Mrs. Parkhurst argued, at the hearing above referred to on the Capper bill before the Judiciary Committee of Congress on January 11, 1924, that the popular demand for the federal amendment was insistent, basing her claim upon the wide publicity given the proposal in the public press. She stated that when the General Federation of Women's Clubs endorsed the movement there was scarcely a paper in the land that did not carry the news. More than ten thousand clippings including over three thousand editorials on the subject were collected by the *Pictorial Review*.

In the countervailing claims of the adversaries most of these arguments have been answered more or less successfully and some others in opposition have been advanced. Quite generally they believe that a Federal law would create more vexing problems than it would solve.

It has been pointed out that the diversity in our State laws is not nearly as great as has been claimed. Marriage laws differ mainly in nonessential and relatively unimportant matters, while a vast majority, 80 per cent or more, of divorces are secured upon grounds which are common to nearly all of the States. Important exceptions are admitted but it is thought that it is better that exceptions should exist, however serious, than that we should insist upon a dead level of conformity, which would create other problems.

Proofs have been advanced to show that the importance of migratory divorces is exaggerated very greatly. It is

believed that probably not over 3 per cent are of this sort. A few conspicuous cases and a divorce colony or two over-impress the imagination. Even if migration among the States should be eliminated by a uniform Federal law there still would exist the opportunity of evasion of restrictions by resort to migration to foreign countries which would be less favorable to our national dignity.

"Legal entanglements" which arise at present are, in the main, confined to two or three States. The law could not alter the conditions which give rise to present perplexities, and since by the proposed act the administration of the Federal law is left to the courts of the several States, and since enforcement depends so largely upon interpretation, it is likely that the result would be to leave most of the difficulties unsolved.

A Federal law would curtail desirable experimentation in legislation in the interest of general improvement and in setting standards, and would curb the progressive States in their desire to lead in the progress of reform. Constructive efforts and the application of indirect methods to improve a situation would be impossible under a régime of standardized control. At the same time it would be unjust, it is asserted, to States like South Carolina and New York to force upon them a more liberal code, especially with reference to the causes of divorce, than they believe to be desirable.

Sponsors for the States' Rights doctrine urge that "local self-government is the nursery of Yankee experiment and wisdom." We have the kind of laws now where we need them most. The Fathers of the Republic perceived clearly the wisdom of leaving to the States the power to legislate in a wide range of subjects, including marriage and divorce, in harmony with local environment, cultural traditions, and historic policies, and we should do well to follow their judgment. It is further contended that a Federal law would be undemocratic because it violates the principle of local

self-determination and forces people to live under a system of laws which they do not sanction.

With regard to respect for law, the present situation in reference to the Eighteenth Amendment is cited as contradictory evidence. It is difficult to enforce a general law which contravenes the prevailing sentiment of local communities or of large factions. The respect for law, broadly speaking, would hardly be increased if a Federal law were to be imposed upon the people of a State who should regard it, not only as out of harmony with their traditions, but as actually in violation of their convictions.

In rebuttal of the argument for uniformity on the plea of popular demand, it is denied that there is widespread popular discontent with the present situation. The Capper bill repeatedly has been pigeonholed by Congress, and the States showed no enthusiasm for the proposed Uniform Law, since only three of them modified their marriage and divorce laws in conformity with its provisions.

Others assert that the advocacy at this time of a Federal amendment which is at present neither desirable nor feasible is unfortunate, because it diverts attention from pressing issues of local concern which constitute the first steps in a larger future program of social reform.

We have endeavored to present the above history and arguments with fairness and impartiality in order that the reader may form his own conclusions as to the merits of the proposed amendment to the Constitution. We desire now, however, to record two observations which express our own convictions on certain aspects of the subjects.

In the first place, regardless of what other influences such a law might exert, and some of them doubtless would be beneficial, it would have little effect, if any, in diminishing the divorce rate, for the simple reason that the causes which determine the divorce trend lie outside the domain of law and are neither produced by it nor are they subject in any considerable degree to its control.

In the second place, the state of the public mind with respect to the problem, with its great diversity of views as organized in the several State constitutions, is of such character that it is hardly conceivable that any general law could be framed which would have back of it, and would embody within it, a sufficient consensus of public opinion as to carry the necessary weight of conviction which would result in its successful administration and enforcement, and without which the law however good and desirable would be a dead letter.

CHAPTER NINE

ECCLESIASTICAL DIVORCE LEGISLATION

ANOTHER FORM OF THE EFFORT TO "CONTROL" THE divorce trend by legislation—that of the ecclesiastical—is now to be considered.

Almost from the beginning of its history as an ecclesiastical organization the Church regarded the institution of marriage and the family as one of its chief concerns. We pointed out in Chapter IV the manner in which the Church gradually acquired jurisdiction over marriage and divorce, so that by the latter part of the Middle Ages its dominion was complete. Ecclesiastical law alone, and practically unchallenged, governed the entire subject. We saw, too, how the rise of the political State to a position of ascendancy and the consequent development of the civil-contract theory of marriage, resulted in the State's taking over the function of legal control.

The Church, however, has never surrendered what it has believed to be its function of moral and spiritual dictatorship and so, to the limits of its "sphere of influence," it has sought to shape civil legislation according to its ideals and to uphold its own standards by appropriate ecclesiastical legislation. There is this essential difference, however, between the respective domains of civil and ecclesiastical law. Marriage is a civil institution as defined in secular law and the State arrogates to itself the right to regulate marriage with all its incidents by its civil codes. Within this realm the Church has no jurisdiction, but it can, and does, by its own enactments set up authoritative rules for the government of its members and adherents as well as for its priests and ministers. It has, therefore, the

function of creating certain attitudes and of enforcing its will with reference to the sanctions of the civil law. The Church may not, of course, council disobedience to civil law but it may express its judgment on the merits of civil enactments and it may deny to its members the benefits of law when the law stands contrary to its convictions, as, for example, when the Catholic Church denies to its members the right to utilize the civil law of divorce. While this method of control is less direct than that of the State, it must be regarded, notwithstanding, as an effective means of accomplishing the same end.

It is necessary, therefore, to study the subject of ecclesiastical legislation in order to determine its nature and to discover what trend, if any, is observable during the period of our survey, as well as to estimate its effects upon the divorce trend.

The Roman Catholic Church, since the establishment of the theory of the sacramental character of marriage and the consequent doctrine of indissolubility, has remained consistent and has made no changes in its ecclesiastical law which could in any way affect the problem of divorce. It is only in Protestantism, therefore, that we find such alterations.

While ecclesiastical legislation among the Protestant Churches of America on the subject of divorce in a few instances originated at an earlier date, the beginning of activity in this regard follows the publication of the first Marriage and Divorce Report when public interest in general on this subject was aroused. It thus coincides with the period of our study. A résumé of the legislation of several of the leading denominations, as presented in their official publications or embodied in their creeds, is submitted. The churches whose enactments are here reviewed have been selected, both because they are representative of the whole Protestant Church, and because their legislation on the subject is authoritative for their respective bodies.

The Protestant Episcopal Church in the United States

Legislation on divorce began in 1868, when Canon 13, Title II, was adopted and made the law of the Church. It follows:

"No minister of this church shall solemnize matrimony in any case where there is a divorced wife or husband of either party still living; but this Canon shall not be held to apply to the innocent party to a divorce obtained for the cause of adultery, or to parties once divorced seeking to be united again."¹

At the second triennial convention following, in 1874, a new canon was proposed and referred to the next convention, at which time it was adopted. The text follows:

"Sec. I. If any persons be joined together otherwise than as God's Word doth allow, their marriage is not lawful.

"Sec. II. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has a divorced husband or wife still living, if such husband or wife has been put away for any cause arising after marriage; but this Canon shall not be held to apply to the innocent party to a divorce for the cause of adultery, or to parties once divorced seeking to be united again.

"Sec. III. If any Minister of this Church shall have reasonable cause to doubt whether a person desirous of being admitted to Holy Baptism, or to Confirmation, or to Holy Communion, has been married otherwise than as the Word of God and the discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon: *Provided, however*, that no Minister shall, in any case, refuse the sacraments to a penitent person in imminent danger of death."²

¹ *Journal of the General Convention*, 1863, House of Deputies, p. 139, House of Bishops, p. 253.

² *Ibid.*, 1877. Adopted by the House of Deputies, p. 186. Approved by the House of Bishops, p. 197. Text, p. 126 of the Canon.

In 1886 the House of Deputies passed the following resolutions:

"Resolved, Toward restoration of American civilization, decaying already at its root, for the promotion of stability in Church and State, for the promotion of social purity and order, for the sake of natural good morals, in advancement of the glory of our Lord Christ, 'Who is Head over all things to His Body, which is the Church,' that this house will not abandon the subject of Marriage and Divorce until legislation upon it be effected in full accordance with the Law of God as set forth in Nature and revealed in the Word; and that it appoint a committee to consist of three Presbyters, and two Laymen, to sit during the next three years, take into consideration the whole subject, and report to the next General Convention as early as possible in its session.

"Resolved, That, in view of the great evils connected with the subject of Divorce, and the importance of obtaining trustworthy information on the subject, a committee of this House be appointed to memorialize Congress on the subject of securing such information."¹

Efforts were made at every General Convention from 1889 to 1901 to revise the Canon on Marriage and Divorce, but the two Houses were not able to agree, and the matter was referred from one convention to another. At the General Convention held in San Francisco in 1901, however, the following significant resolution was adopted by the House of Deputies and ratified by the House of Bishops:

"Resolved, That a joint commission be appointed, consisting of three Bishops, three Presbyters, and three Laymen, whose duty it shall be to confer with the official representatives of other religious bodies in the United States with a view to establishing uniformity of practice on the subject of Holy Matrimony and Divorce."²

¹ *Ibid.*, 1886, p. 313.

² *Ibid.*, 1901, House of Deputies, p. 296, House of Bishops, p. 136.

In 1904 the whole order of the Canons of the Church was rearranged. At the same convention both Houses agreed upon a revision of the Canon on Marriage and Divorce, which appears in the new arrangement as Canon 38, and is entitled, "Of the Solemnization of Matrimony." The text follows:

"Sec. I. Ministers of the Church shall be careful to secure the observance of the law of the State governing the civil contract of marriage in the place where the service shall be performed.

"Sec. II. (1) No minister shall solemnize a marriage except in the presence of at least two witnesses.

"(2) Every Minister shall without delay formally record in the proper register the name, age, and residence of each party. Such record shall be signed by the minister who solemnized the marriage, and, if practicable, by the married parties, and by at least two witnesses of the marriage.

"Sec. III. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has been or is the husband or wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage. But this Canon shall not be held to apply to the innocent party in a divorce for adultery; *Provided*, that before the application for such marriage, a period of not less than one year shall have elapsed, after the granting of such divorce; and that satisfactory evidence touching the facts in the case, including a copy of the Court's Decree, and Record, if practicable, with proof that the defendant was personally served or appeared in the action, be laid before the Ecclesiastical Authority, and such Ecclesiastical Authority, having taken legal advice thereon, shall have declared in writing that in his judgment the case of the applicant conforms to the requirements of this Canon; and *Provided*, further, that it shall be within the discretion of any Minister to decline to solemnize any marriage.

"Sec. IV. If any Minister of this Church shall have reasonable cause to doubt whether a person desirous of being admitted to Holy Baptism, or to Confirmation, or to Holy Communion, has been married otherwise than the Word of God and the discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon: *Provided, however*, that no Minister shall in any case, refuse these ordinances to a penitent person in imminent danger of death."¹

Since 1910 there have been periodic proposals to amend the canon dealing with marriage and divorce. In 1910 the House of Bishops passed the following resolution:

"*Resolved*, The House of Deputies concurring, that sec. III of Canon 38 be amended by striking out all the words of the section after the words 'arising after marriage.'"²

This action failed of ratification by the House of Deputies and was referred to the next General Convention. No action was taken by the 1913 Assembly and the issue did not arise again in any definite proposal until 1916. At the General Convention of 1913, however, the House of Deputies adopted a resolution favoring the enactment of uniform divorce laws by the Congress of the United States. The resolution follows:

"*Resolved*, The House of Bishops concurring, that this Convention express its sympathy with the effort of the international Committee on Marriage and Divorce which is making an attempt to procure an amendment to the Constitution of the U. S. to enable Congress to enact a uniform law of marriage and divorce."³

The House of Bishops did not concur, giving as its reason, that it was "not prepared to commit the Church to the support of a Federal law on the subject rather than

¹ *Ibid.*, 1907, House of Bishops, p. 22, House of Deputies, p. 41. Text of the report, Appendix, viii, pp. 514-517.

² *Ibid.*, 1910, p. 376, House of Deputies.

³ *Ibid.*, 1913, p. 227, House of Deputies.

to the support of what seems the more hopeful movement of a uniform law on divorce in the several States."¹

At the triennial convention held in St. Louis in 1916 a "Joint Commission on Legislation on Matters Relating to Holy Matrimony" presented the following recommendation for amendment to Canon 38, "Of the Solemnization of Matrimony," by the substitution of the following sections:

"Sec. III (1) No marriage shall be solemnized in this Church between parties either of whom has a husband or wife still living, who has been divorced for any cause arising after marriage.

"(2) Where it is claimed that the divorce has been granted for causes arising before marriage, satisfactory evidence touching the facts in the case, including a copy of the court's decree and record, if practicable, with proof that the defendant was personally served, or appeared in the action, shall be laid before the Ecclesiastical Authority, who shall thereupon take council with his chancellor or other legal advisor. Where this claim is established by the record, the Ecclesiastical Authority shall declare in writing that such a divorce, being in fact a Decree of Annulment, is no bar to the marriage of either party.

"Sec. IV. The admission to the Sacrament of persons who have entered on marriage not in accordance with the laws of the Church, shall be referred by the minister of the Congregation to the Bishop of the Diocese, whose decision on the matter shall be final."²

This recognition of possible causes "arising before marriage" as justification for divorce may be interpreted as a step in the direction of leniency. That charge, however, is offset by the omission of the adultery clause which had heretofore constituted the only possible ground for divorce. Action on the recommendation was deferred.

¹ *Ibid.*, p. 341.

² *Ibid.*, 1916, p. 504.

In 1919 the House of Bishops adopted the following resolution: "That we unanimously reaffirm and heartily recommend to the immediate attention of President Wilson and of the Committee on the Judiciary of the Federal Congress the resolutions of the Province of the Pacific favoring an amendment of the Federal Constitution to serve as a basis of a Federal Marriage and Divorce Law to the end that Congress may thus have power to protect our children's rights."¹ The House of Deputies concurred.²

There were numerous attempts to amend the Canon on Marriage and Divorce from 1916 to 1925 but only slight changes of little significance were made.

In 1925 a Joint Commission consisting of three bishops, three presbyters, and three laymen, was appointed to study the whole problem of divorce, its conditions and causes, to report at the next General Convention.³

The Commission reported progress in the General Convention of 1928 and was continued.

The Presbyterian Church in the United States

Since the framing of the Westminster Confession of Faith in 1643, it has contained the following statement in reference to divorce:

"Although the corruption of man be such as is apt to study arguments, unduly to put asunder those whom God hath joined together in marriage; yet nothing but adultery, or such wilful desertion as can no way be remedied by the church or civil magistrate, is cause sufficient of dissolving the bond of marriage: wherein a public and orderly course of proceeding is to be observed; and the persons concerned in it, not left to their own wills and discretion in their own case."⁴

¹ *Ibid.*, 1919, p. 149.

² *Ibid.*, p. 238.

³ *Ibid.*, 1925, pp. 122 and 144.

⁴ *Confession of Faith*, Chap. xxiv, Sec. iii.

The first special action of the Church was in 1872, when the following resolution was adopted by the General Assembly:

"WHEREAS, Latitudinarian ideas on marriage and divorce are alarmingly prevalent at the present time, and, in some portions of the country, practically demoralizing,

"Resolved, That this General Assembly enter its solemn protest against such loose opinions, and calls upon all its ministers to use their moral influence to create a more healthful sentiment in the community, and a thoroughly Scriptural practice in the Church."¹

The next resolution was adopted in 1883, as follows:

"WHEREAS, The preservation of the marriage relation, as an ordinance of God, is essential to social order, morality, and religion, and,

"WHEREAS, That relation, in the popular mind, is shorn of its divine sanction, to such an extent, that, not only are its sacred bonds often sundered for insufficient reasons, but the action of the civil Courts and the divorce laws in many of the States, are in direct contravention to the laws of God; therefore, be it,

"Resolved, That the General Assembly hereby bears testimony against this immorality, and earnestly advises the churches and Presbyteries under its care to make use of all proper measures to correct this widespread evil."²

In 1884 an overture was received asking that the phrase "or such wilful desertion as can in no way be remedied by the church or civil magistrate" as a cause for divorce be stricken out of Chapter xxiv, section vi, of the *Confession of Faith*. The committee reported as follows:

"As there is no evidence of a general desire for the proposed change, and as a compliance with the request would practically be for the Assembly to assume the initiative in the matter, the Committee recommends that no action be

¹ *Minutes of the General Assembly*, 1872, pp. 73-74.

² *Ibid.*, 1883, p. 689.

taken in the direction suggested by the overture; but that the Assembly at the same time, express its profound conviction that the Church should, by every means at its disposal, resist the growing laxity of legislative and judicial action in respect to divorce."¹

Overtures of similar import were received in 1888, 1890, and 1902. The assembly took no action in 1888, but in 1890 it recommended: "That the frequent and decided utterances of former Assemblies on this subject be deemed sufficient."² In 1902, having responded to the request of the Protestant Episcopal Church for a committee to confer with the committees of other churches in America on this subject, looking to some concerted action, it was decided that "it would not be desirable to take up the question of altering our own Constitution until this committee has reported." It was further

"*Resolved*, That this General Assembly, viewing with sad apprehension the many perils to family life in our time, the growing ease and frequency of divorces upon grounds trivial and unscriptural, urges upon all our people the promotion of a wider reverence for the marriage bond; and requires all our ministers that they instruct their people in public and private of the sacredness of this divine institution, and that they exercise due diligence before the celebration of a marriage to ascertain that there exists no impediment thereto, as defined in our Confession of Faith."³

In 1903, after endorsing the report of the Special Committee on Divorce and Remarriage, the following resolutions were adopted:

"*Resolved*, That this General Assembly favors every lawful endeavor to correct the evils of lax legislation regarding the subjects of divorce and remarriage, and to

¹ *Ibid.*, 1884, p. 76.

² *Ibid.*, 1890, p. 129.

³ *Ibid.*, 1902, pp. 125-126.

secure such uniformity of legislation thereon as may best promote the purity of society.

"Resolved, That this General Assembly hereby enjoins all ministers under its care and authority to refuse to perform the marriage ceremony in the cases of divorced persons, except as such persons have been divorced upon grounds and for causes recognized as Scriptural in the Standards of the Presbyterian Church in the United States of America."¹

The Committee on Marriage and Divorce reaffirmed, in 1904, the law relative to ministers marrying divorced persons and declared that the civil law was no excuse for the violation of the law of the Church.²

The following resolutions were adopted in 1907 as the result of the report of the committee representing the Inter-church Conference on Marriage and Divorce:

"Resolved, 1. That this General Assembly rejoices in favorable results already reported and expresses the hope of more radical reform.

"Resolved, 2. That this General Assembly hereby reaffirms the deliverances of former Assemblies regarding divorce and remarriage.

"Resolved, 3. That Presbyteries are hereby enjoined to enforce the Standards of our Church, to hold to strict account all ministers under their care, and to urge all ministers to regard the comity that should refrain from giving the sanction of our Church to members of another church, whose marriage is in violation of the laws of the Church whose communion they have chosen."³

The General Assembly, in 1908, endorsed the report of the Committee on Marriage and Divorce, commended its work, and reaffirmed "all deliverances upon divorce

¹ *Ibid.*, 1903, p. 140.

² *Ibid.*, 1904, p. 73.

³ *Ibid.*, 1907, p. 199.

and remarriage after divorce, adopted by previous General Assemblies."¹

Until the year 1910 a special committee actively was engaged in the consideration of the problem of marriage and divorce. In that year this committee was discharged and the work was intrusted to the Federal Council of Churches. No special action was taken thereafter until 1912 when the Assembly adopted the following resolution:

"Resolved, That the Committee on Christian Life and Work communicate with the Presbyteries on the subject of the laws of the States and of the United States both as to Marriage and Divorce, recommending action by each, in order to secure proper regulations by the State in connection with Marriage, and also to secure such legislation as will make the laws of divorce more strict and more nearly in accordance with the law of God."²

The following resolutions, contained in the report of the Committee on Christian Life and Work were adopted by the General Assembly in 1913:

"Resolved, 1. That our ministers and churches be earnestly urged to organize a new and widespread campaign of education in the churches, regarding the sacredness of marriage and the evils of divorce, and to arouse all classes in the community by means of the press, the school, and the social agencies, to the need of reform.

"Resolved, 2. That all our ministers and Church courts be urged to study the present laws in each State on marriage and divorce, with the aid of earnest Christian lawyers and other laymen, with a view to the introduction of new and improved codes pertaining to marriage and divorce, with a view also of eventually securing uniformity of legislation if practicable, and to that end competent committees be created to prosecute the matter successfully."³

¹ *Ibid.*, 1908, p. 167.

² *Ibid.*, 1912, pp. 271-272.

³ *Ibid.*, 1913, p. 40.

A more definite position was stated in a brief resolution which was adopted at the meeting of the 1914 General Assembly:

"Resolved, That the Assembly places itself on record as in favor of the Federal Divorce Law."¹

Again, in 1916, the Committee on Christian Life and Work submitted in its report the following resolutions:

"Resolved, 1. That the General Assembly advises, in behalf of a campaign in education pertaining to marriage and divorce, that all our ministers be requested to preach upon the sanctity of marriage and the evils of divorce at least once every year, at such time as may seem to them expedient, and, if possible, in connection with the simultaneous movement on this behalf in the community.

"Resolved, 2. That the General Assembly advises the various Synods to take up the matter of improved codes pertaining to marriage and divorce with the aid of able members of the legal profession, and to take such steps to this end in their respective states as may seem wise and necessary, and especially to make suitable petition, in accordance with the Confession of Faith [Ch. XXXI, Sec. 4], to the legislature and other civil authorities for the needed relief."²

The subject of marriage and divorce was included in 1919 in the work of the Board of Temperance and Moral Welfare, and in the 1920 report of that Board the following resolution was presented to the General Assembly and adopted.

"Resolved, That we urge the adoption by the several States and the United States Congress of measures regarding marriage which will protect the integrity of the family and the welfare of present and future generations."³

¹ *Ibid.*, 1914, p. 187.

² *Ibid.*, 1916, p. 284.

³ *Ibid.*, 1920, p. 81.

In 1921 certain recommendations were presented to the General Assembly by the Committee on Temperance and Moral Welfare. These recommendations, as adopted, read as follows:

"a. The family is one of the divine institutions. A proper establishment of it is one of the vital duties of the Church and State. The minister's duties in the performance of marriages is clear and definite. Coupled with these facts we view with increasing alarm the growing evil of divorce. Often the marrying of parties who may have been divorced brings reproach upon the Church, when the minister fails to uphold the high ideals of marriage. In view of these things the Assembly reaffirms former deliverances requiring Presbyters and ministers to adhere strictly to our standard regarding marriage, divorce and the marrying of divorced people.

"b. We declare it to be the sense of this Assembly that ministers when asked to perform the marriage ceremony should ascertain the facts about the parties and should refuse to join in marriage persons not entitled to Christian marriage.

"c. That this assembly instructs the Board of Temperance and Moral Welfare to urge upon the reform agencies and the legislative bodies in the several States the wisdom of a law in each State, making marriage licenses invalid until five days have elapsed from the date of its issuance. Furthermore, that we approve the proposed amendment to the Federal Constitution now before the Senate Judiciary Committee which proposes to give Congress power to enact uniform marriage and divorce laws."¹

In 1924, the Assembly adopted the report of the Committee on Christian Education and Moral Welfare which included the following:

"We reaffirm former deliverances and approve all wise and necessary measures to make effective in letter and in

¹ *Ibid.*, 1921, p. 108.

spirit the judgment of previous Assemblies on the subject of marriage and divorce."¹

At the meeting of the General Assembly in 1925, the position of the Church which has consistently been maintained throughout its legislation on the subject again was recorded in the resolution offered by the Committee on Christian Education. The resolution as presented and adopted reads as follows:

"15. That the General Assembly reiterate with emphasis the deliverance of the General Assembly of 1905 concerning divorce, namely 'that ministers should refuse to marry divorced persons, except the innocent party in a case where the divorce has been granted on Scriptural grounds, nor then until assured that one year has elapsed from the date of the decision allowing the divorce.'"²

In 1926 an overture was presented to the General Assembly by the Butler Presbytery calling for a committee to consider an amendment to the Confession of Faith relating to marriage and divorce. A committee was appointed to report in 1927.³

In 1927 the committee merely reported progress and asked for more time to study the question.⁴

In 1928 the committee reported favorably on the overture and recommended that it be handed down. It follows.

"Shall the Confession of Faith, Chapter XXIV, Section VI, be amended so as to strike out the words 'or such willful desertion as can in no way be remedied by the Church or civil magistrate' so that this section will read as follows:

"Sec. VI. Although the corruption of man be such as is apt to study arguments unduly to put asunder what God hath joined together in marriage; yet nothing but adultery is cause sufficient of dissolving the bond of marriage:

¹ *Ibid.*, 1924, p. 116.

² *Ibid.*, 1925, p. 50.

³ *Ibid.*, 1926, pp. 96 and 256.

⁴ *Ibid.*, 1927, pp. 56-57.

wherein a public and orderly course of proceeding is to be observed; and the persons concerned in it, not left to their own wills and discretion in their own case."¹

This overture was defeated by a vote of 184 presbyteries to 56.²

At this Assembly, 1929, a resolution was adopted calling for a commission of not less than eleven members, six of whom shall be ministers and five elders, to make an exhaustive study of the subject of marriage, divorce and remarriage, making use of the studies available, an analysis of the statutes of the several States on the subject, and the efforts of Protestant churches and social agencies to deal with it, and report its conclusions and recommendations to the General Assembly of 1930.³

The Methodist Episcopal Church

Interest in the subject of divorce in the Methodist Church is manifested as early as 1860, when a resolution was presented with the view of bringing the matter to the attention of the General Conference:

"*Resolved*, That a committee of five be appointed by the chair to take into consideration the subject of divorce, and report upon the same to this Conference."

This resolution was adopted,⁴ and the committee reported as follows:

"*Resolved*, That it is the sense of this General Conference that the marriage relation can only be dissolved by a violation of the seventh commandment, or by death: and, that a second marriage, contracted while a husband or wife is living, unless the former relation is dissolved for the above cause, is contrary to the teachings of the Holy Scriptures."⁵

¹ *Ibid.*, 1928, pp. 60-61.

² *Ibid.*, 1929, pp. 53-55.

³ *Ibid.*, 1929, p. 76.

⁴ *Journal of the General Conference*, 1860, p. 34.

⁵ *Daily Christian Advocate*, Buffalo, N. Y., May 23, 1860.

The only action taken was to lay the report on the table and to order it printed. This was done by a vote of ninety-four to ninety-one.

The matter was introduced in a similar way in the General Conferences of 1868, 1876, and in 1880, but no action was taken. In the General Conference of 1884 the following definite resolution was adopted:

"That no divorce shall be recognized as lawful by the Church except for adultery. And no minister shall solemnize a marriage in any case where there is a divorced wife or husband living; but this rule shall not apply to the innocent party in a divorce for the cause of adultery, nor to divorced parties seeking to be reunited in marriage.

"And it further recommended, that this Conference invoke the Governments of the several States to appoint commissioners for the purpose of taking into consideration the enactment of uniform codes of divorce, and reducing the number of causes therefor, to such grounds as may be justified by the Scriptures."¹

The first part of this resolution appears as paragraph 46 of the Discipline [page 33].

In 1888 a fruitless attempt was made to exclude divorced persons from the Church. The memorial which failed of adoption follows:

"*Resolved*, That rule 46, p. 33, of the Discipline be so amended as to prevent persons (who have secured divorces on frivolous grounds not warranted in the Word of God or the Discipline of our Church) from holding membership in our Church."²

Four memorials of similar import were presented in 1892, and another in 1896, none of which were taken up for action.

In the Conference of 1900 an effort was made to cut out from the Discipline the clause which limits divorce to one scriptural cause. The memorial was ignored.

¹ *Journal of the General Conference*, 1884, p. 334.

² *Ibid.*, 1888, p. 231.

The Conference, in 1904, authorized a commission to act with the Inter-church Conference on Marriage and Divorce, and,

*"Resolved, That we call special attention of all our ministers to our law contained in par. 39 of the Discipline, relating to marrying divorced persons, and earnestly insist upon the necessity for strict obedience to the law of our Church upon this matter."*¹

The position of the Methodist Episcopal Church on the subject of divorce has been consistently that as briefly stated in the "Book of Discipline," paragraph 68, which reads:

"No divorce, except for adultery, shall be regarded by the Church as lawful; and no minister shall solemnize marriage in any case where there is a divorced wife or husband living; but this rule shall not be applied to the innocent party to a divorce for the cause of adultery, nor to divorced parties seeking to be re-united in marriage."

The fact that this ruling has appeared in the Discipline under the heading "Special Advices" has caused repeated discussion since 1908 in the meetings of the General Conference of the Church. In that year the Episcopal Address contained the following recommendation:

*"We are of the opinion that paragraph 68 of our Discipline, which is wholly mandatory in language, ought to be placed among our laws; it being evident from the language of the paragraph that it is law, and, as such, has no place among the Special Advices."*²

Upon the recommendation of the Committee on Judiciary the position that paragraph 68 was not merely an "Advice" but a law was confirmed by the General Conference.³ However, for some reason, it failed to be placed among the Laws of the Church. The matter was again voiced in the Episcopal Address of 1912. This reads as follows:

¹ *Ibid.*, 1904, p. 397.

² *Ibid.*, 1908, Episcopal Address, p. 133.

³ *Ibid.*, 1908, Judiciary Decisions, p. 320.

"In the clear mandatory language of the paragraph 68 of our Book of Discipline, our ministers are forbidden to officiate at any marriage either party to which may have been divorced, if on other than scriptural reasons, and the former husband or wife of such divorced person be still living. Four years ago we recommended that this paragraph, so plainly statutory in its terms, should be taken from 'Special Advices' and be placed among the other laws of the Church. Probably by an oversight this was not done. For the sake of consistency with the opening declaration of that paragraph 68, that the Church cannot regard as lawful any divorce obtained for any other cause than that named by our Lord, we now repeat our recommendation with all the added emphasis supplied by the monstrous indecencies that have openly sought legal sanction in our divorce courts since our previous utterance. The Church must stand inflexibly for the sacredness of the marriage covenant. It is the divine charter of the home and family, ordained not only for the purity and dignity of womanhood, the protection and nurture of childhood, and the enobling of manhood, but for the preservation in every household of the type and spirit of the Divine Fatherhood. Whatever our civil government may sanction, the Church can never consistently regard marriage as merely a civil contract to be entered into for convenience or profit, or terminated for reasons no more valid than these in the sight of God."¹

The Conference in 1916 expressed itself in favor of certain movements directed toward the securing of a Federal divorce law. The Committee on State and Church presented the following resolution which was adopted:

"*Resolved*, That we urgently request the Judiciary Committee of the House and Senate at Washington to send out at once House Joint Resolution 200, which submits to the Legislature of the several States an amendment to the

¹ *General Conference Journal*, 1912, p. 218.

Federal Constitution to enact and enforce uniform laws on marriage and divorce."¹

The Commission on Divorce took action in the matter of ministerial practice in regard to marriage and divorce. Report No. 9 of that commission contained the following recommendation which was adopted by the Convention:

"In accordance with the urgent suggestions in the Episcopal Address, in the section on 'The Church and Moral Reform,' and under the sub-title 'The Family and Divorce' we recommend:

"That at the close of paragraph 255, section 1, of the Discipline which now reads 'A minister shall be answerable to his Conference on a charge of corrupt, negligent, or partisan administration, but not for errors in judgment,' there shall be added this sentence, 'The violation of the advice concerning divorce, in paragraph 68 of the Discipline, shall be considered an act of Maladministration.'"²

No action is recorded in the Minutes of the General Conference of 1920 relating to marriage and divorce. This may account for the added emphasis that the subject received in the 1924 Conference meeting. In a very lengthy report the Judiciary Committee interpreted the law of the Church on the matter of Divorce and Marriage, reiterating the positions taken by the previous Conference bodies.

Recognition was given of the movement to secure uniformity in the divorce and marriage laws of the several States of the Union. The following resolution to this effect was adopted:

"WHEREAS, The divorce evil has grown to such proportions as to imperil the existing American home, and

"WHEREAS, There is pending before the Congress of the United States a proposal having for its object the amendment of the Constitution of the United States empowering

¹ *Ibid.*, 1916, p. 466.

² *Ibid.*, 1916, pp. 617-618,

Congress to establish uniform laws on the subject of divorce thruout the United States; therefore, be it

*"Resolved, By the General Conference of the Methodist Episcopal Church assembled at Springfield, Mass., May, 1924, that said conference does hereby memorialize the Congress of the United States to pass such legislation as will result in the submission to the several States of a proposed amendment to the Constitution of the United States empowering the Congress to establish uniform laws on the subject of divorce thruout the United States."*¹

In the General Conference of 1928 paragraph 68 of the Discipline was amended by substituting the following:

"Sec. 1. We hold that true marriage is an institution both human and divine. It is the function of the State to determine the grounds upon which a valid divorce may be granted. We recognize as lawful a divorce granted by the State.

"Sec. 2. It is the function of the Church to determine the regulations that shall govern Ministers in the solemnizing of marriage of divorced persons and in the reception of divorced persons into Church membership.

"Sec. 3. No Minister shall solemnize the marriage of a divorced person whose divorced wife or husband is living and married; but this rule shall not apply to (1) the innocent person when it is clearly established in the mind of the Minister that the true cause for divorce is adultery, or its full moral equivalent, nor (2) to divorced persons seeking to be reunited in marriage.

"Sec. 4. A divorced person seeking admission into membership in our Church, who manifests a proper spirit and satisfactorily answers the usual inquiries, may be received."²

This paragraph [now No. 70] still stands among the "Advices."

¹ *Ibid.*, 1916, Report 8, p. 616.

² *Ibid.*, 1928, pp. 472 and 624.

The Reformed Church in America

No action on the subject of divorce appears in the minutes of the General Synod before the year 1898. At that time the Committee on National Affairs reported on the Ray bill, a proposed divorce law [House of Representatives, 5184], which bill provides for a divorce law to be enacted for the District of Columbia and the Territories, conforming to the laws of New York State, that absolute divorce shall be allowed only in case of adultery. The action follows:

"The Reformed Church has been consistent in upholding the sanctity of the marriage bond, and deprecating easy and promiscuous divorce, and would welcome a National Law prescribing uniform conditions of marriage and divorce. As a step toward this much needed end, which at present seems impracticable, the proposed measure appeals to your committee as worthy of the support of the Christian public.

"Your committee offers the following resolution:

"*Resolved*, That the stated clerk of the General Synod be authorized to affix his signature as our representative and in our name to petition the honorable Senate and House of Representatives of the United States, praying them to pass a bill to limit absolute divorce to cases of adultery in the District of Columbia and the Territories."¹

The report with the resolution was adopted.

The following resolution presented by the Committee on Public Morals in 1899 was adopted:

"*Resolved*, That in view of the deplorable evils growing out of the existing methods for procuring easy divorce, prevalent in many States, and frequently resulting in the remarriage of guilty parties in divorce proceedings, the General Synod of the Reformed Church in America, takes this opportunity of declaring its uncompromising opposi-

¹ *Minutes of the General Synod*, 1898, Vol. xix, p. 256.

tion to all such remarriages as opposed to the spirit and mind of Christ, and it enjoins the entire body of the Church, clerical and lay, to take no part in giving approval to such remarriages whether authorized by the State Law or not; but on the contrary to unceasingly cooperate in the work of developing a strong and healthy public sentiment which shall diminish if not suppress the evil practice and correspondingly elevate the character of public and private morality."¹

In 1903 a delegate was appointed to participate in the councils of the Inter-Church Conference on Marriage and Divorce.²

At this same Synod a preamble and resolutions were presented and referred to a special committee:

"WHEREAS, The teaching of our Lord and Saviour, Jesus Christ, the Head of the Church, clearly affirms that the bond of marriage cannot be dissolved excepting by death or through unfaithfulness of one of the parties to the marriage vow; and,

"WHEREAS, The laxness of divorce and the remarriage of divorced persons is an evil of growing proportions, and of most serious menace to our Christian civilization; therefore,

"Resolved, That the General Synod hereby enjoins upon the Ministers of the Reformed Church not to remarry divorced persons, excepting the innocent party to a divorce obtained for the cause of adultery."³

The special committee reported at the next General Synod, recommending the adoption of the resolution. The committee's report was adopted.⁴

Upon the report of the Committee of the Inter-Church Conference on Marriage and Divorce, in 1905, the Synod took action as follows:

¹ *Ibid.*, 1899, Vol. xix, pp. 502-503.

² *Ibid.*, 1903, Vol. xx, pp. 396-397.

³ *Ibid.*, 1903, Vol. xx, p. 466.

⁴ *Ibid.*, 1904, Vol. xx, pp. 777-779.

"*Resolved*, That the General Synod R.C.A. in compliance with the recommendation of the 'Inter-Church Conference on Marriage and Divorce,' hereby earnestly enjoins all Ministers under its care and authority to refuse to marry any divorced person, except the innocent party in a case where the divorce has been granted on Scriptural grounds: nor then until assured that a period of one year has elapsed from the date of the decision allowing the divorce.

"*Resolved*, That we heartily approve the 'Act' recommended by the American Bar Association of 1900, seeking a uniform and radical reform in the Divorce Laws throughout the United States; urging, however, the amendment of the sixth section of the 'Act' so as to provide that if action is to be taken on the subject of remarriage the innocent party shall not marry again within a year from the date of the decision allowing divorce; and that a just discrimination shall be made between the innocent and guilty party."

It was resolved further, that the Synod should continue its cooperation with the Inter-Church Conference on Marriage and Divorce.¹

At the meeting of the General Synod in 1906 the following resolutions were adopted:

"That the Reformed Church in America hereby expresses deep sympathy with the aims and efforts of the Inter-Church Conference on Marriage and Divorce and great satisfaction with the steps taken to secure better and uniform Divorce laws.

"That this General Synod reaffirm the action of the General Synod of 1905 cautioning our clergy as to the marriage of divorced persons, as well as promising our hearty cooperation in all suitable ways with the churches associated with the work of the Inter-Church Conference on Marriage and Divorce."²

¹ *Ibid.*, 1905, Vol. xxi, pp. 218-219.

² *Ibid.*, R.C.A., 1906, p. 538.

Since 1906 no legislative utterances on the subject have been recorded.

General Synod of the Evangelical Lutheran Church in the United States of America

The first action of this Church was taken as the result of a memorial presented by the Hartwick Synod:

"WHEREAS, We believe that it is advisable for our churches to have a clear and explicit law for guidance and government of her ministry and laity in the matter of solemnizing the marriage of persons, one or both of whom have been divorced; therefore,

"*Resolved*, That we petition the next General Synod to take some definite action in this direction, either by an amendment to her Formula of Government and Discipline, said amendment to be ratified by the several Synods comprising the General Synod, or by suggesting a uniform law which may be adopted by such Synods as desire to legislate upon this subject."¹

The Committee on Minutes of the District Synods recommended the following action which was adopted:

"Inasmuch as action should not be hastily taken on a subject of such importance as divorce, affecting the future stability of the home, the Church, and the State, we would recommend that a committee of five be appointed to consider this matter carefully, and report, at the next meeting of the General Synod, either an amendment to our Formula of Government and Discipline, or such a law for the government of all our ministers regarding the marriage of divorced persons, said amendment to be submitted to the Synods comprising the General Synod for their approval or rejection."²

At the same Synod a Committee on Uniformity of Divorce Laws was appointed [p. 252].

¹ *Minutes of the Hartwick Synod*, 1905, p. 21.

² *Proceedings of the General Synod*, 1905, p. 12.

Following is the report of the committee in the General Synod of 1907 on the Hartwick memorial:

"1. Our Lutheran theologians, from the Reformation times down to the present day, with scarcely an exception, have recognized two scriptural grounds of divorce, namely, adultery (Matt. v. 32 and Matt. xix 5-9) and wilful or malicious desertion (I Cor. vii. 15).

"2. Many of our theologians have also recognized other legitimate causes for divorce, such as impotence, extreme cruelty, conspiracy against life, and habitual drunkenness, on the ground that these causes really invalidate the marriage bond, and are therefore involved, or included, in the principles underlying the teaching of the Scriptures already referred to.

"3. Our theologians have also uniformly granted to the innocent party to a divorce on these Scriptural grounds the right of remarriage.

"Your committee is of the opinion that this teaching of our theologians is both Scriptural and safe; that it fully guards the sanctity of the marriage relation and the welfare of the family on the one hand, and also, on the other hand, protects the rights of the innocent and the wronged.

"Your committee does not deem it wise to propose an amendment to the Formula of Government and Discipline on this subject, but they recommend the adoption of the following action:

"*Resolved*, That the General Synod recommends to all the District Synods connected with it that, for the guidance of their ministers, they make and establish this rule, that no minister should perform the marriage ceremony for a divorced person whose divorced husband or wife is still living, except the innocent party to a divorce granted on Scriptural grounds, namely, adultery or wilful or malicious desertion, or such extreme cruelty as may be included under the same principle, and then only after the lapse of a period

of twelve months after the divorce has been granted; and that, for their information as to the facts in the case, they may, with a good conscience, accept the statements made in the license granted by the State, or in such other legal documents as may be presented to them by the parties applying for marriage." The report was adopted.¹

The Committee on Uniformity of Divorce Laws reviewed the proceedings of the Divorce Congress in February and November, 1906, but made no recommendations.²

In 1907 also a resolution was offered refusing Church membership "to persons divorced for causes other than those recognized by the Church."³ The resolution was referred to a special committee which presented in its report in 1909 a resolution somewhat less drastic in spirit and practice. The resolution as it was adopted, follows:

"*Resolved*, That after the pastor and other members of the Church Council have carefully examined the person or persons applying for Church Membership, as to their present fitness to be received into the congregation, have prayerfully considered said application in its relation to their own Church and the Church in general, and have unanimously agreed that, under present circumstances, they are justified before God to grant such privilege, then 'persons who have been divorced for other reasons than those mentioned in the report of the Committee on Marriage and Divorce, and were subsequently remarried, may be admitted to membership in our Churches, but not before.'"⁴

Unlike most of the other branches of the Protestant Church, the Lutheran Church in America is not a unit in either its practice or organization. This division is due largely to the racial and national differences. Accordingly that branch of the Church which was more thoroughly

¹ *Ibid.*, 1907, pp. 63-64.

² *Ibid.*, pp. 64-65.

³ *Ibid.*, 1907, p. 64.

⁴ *Ibid.*, 1909, p. 43.

American in its practices was chosen as representative of the Lutheran attitude toward the subject of divorce. In 1918 there was a merger of three of the larger bodies of the Church, in which the General Synod was one party, under the name, The United Lutheran Church in America. Since this union the Church seems to have proceeded upon a program of education rather than of legislation.

In 1924 at the meeting of the General Synod a request was made by the West Pennsylvania Synod that there be a study of the whole question of the remarriage of divorced persons and of the rights and duties of pastors in relation thereto, and a report made to the convention in 1926. The *answer* follows:

"That this subject of divorce and remarriage be referred to the Committee on Moral and Social Welfare to formulate a deliverance on the subject to the next Convention of the United Lutheran Church."¹

In 1926 the committee reported on certain principles which were given without comment in the minutes.²

Again in 1928 this committee made a somewhat lengthy report of the same general nature and which contained no recommendations for legislative action. The matter was left over for further consideration.³

The Congregational Churches in the United States

No action was taken by this Church prior to 1880, when the following minute was adopted:

"The National Council of the Congregational Churches of the United States hereby put on record their deep concern at the alarming increase of divorce throughout the land. Believing that marriage is an institution intended of God to be as permanent as the life of the parties who enter

¹ *Minutes of the United Lutheran Church*, 1924, p. 493.

² *Ibid.*, 1926, pp. 57-58.

³ *Ibid.*, 1928, pp. 582-595.

upon it, we deplore the dissolution of its bonds by human authority, except for the one cause sanctioned by the Saviour. We invite the renewed attention of both ministers and churches to the sanctity of this institution, and urge them to do what lies in their power to put an end to the present widespread and corrupting practice of divorce for causes which find no sanction in the Word of God."¹

The following resolution on divorce was adopted in 1883:

"This Council having at its last session expressed its deep concern at the alarming increase of divorce throughout the land, deplored the dissolution of the bonds of marriage except for the one cause mentioned by our Saviour, and commended the then existing evils growing in the state from this source to the urgent and prayerful attention of the good, now earnestly reiterates its convictions then uttered, and warmly commends as doing an admirable work in this matter the New England Divorce Reform League and the labors of the Rev. Samuel W. Dike, its secretary."²

In the National Council of 1886 former resolutions were reaffirmed and a resolution adopted urging upon Congress and the several States and territories the importance of the collection and publication of statistics on the subject.³

In 1889 the records show the following action:

"The National Council of Congregational Churches again calls attention to the great and increasing number of divorces granted in the United States, which are now officially shown to have increased in the last twenty years more than twice as fast as the population, and also to those other evils that directly affect the family in its constitution, purity, and proper fruitfulness.

¹ *Minutes of the National Council*, 1880, pp. 31-32.

² *Ibid.*, 1883, p. 29.

³ *Ibid.*, 1886, pp. 26, 37, 40.

“*Resolved*, That we invite the careful study of the forthcoming report to Congress of the Commissioner of Labor on marriage and divorce in the United States and Europe, and urge that this be done with two ends in view: first, that wise reformatory legislation may follow; and second, that the proper religious and social influences may be applied at the source of the evils that threaten our family life.”¹

A committee was appointed in 1895 to report at the next National Council its judgment as to the correct scriptural doctrine of divorce.²

The essential features of the report were:

“The divorce treated in this report is divorce *a vinculo matrimonii*—divorce from the bond of matrimony—or such divorce as permits one by law to put away husband or wife, and be married to another person.

“I am of the opinion that there is no existing Scripture doctrine of divorce other than that stated by the Saviour in Matt. xix: 1-9.”³

This report was accepted, and in addition a minority report was also accepted which among other suggestions, contained the following:

“I would respectfully suggest a single further practical step.

“It is that our pastors be invited to follow, so far as they can, some principle of Christian comity in acting upon applications for the celebration of the marriage of persons who could not be married under the rules of the Church to which they belong, and therefore apply to our ministers for the service.”⁴

The following appears in the Minutes of 1901:

“1. We view with serious misgivings the alarming increase in divorces and the consequent deplorable result in domestic and social life.

¹ *Ibid.*, 1889, p. 47.

² *Ibid.*, 1895, p. 41.

³ *Ibid.*, 1898, p. 280.

⁴ *Ibid.*, 1898, p. 282.

"We regard the purity and unity of the family as cornerstones of Christian homes and Christian civilization.

"2. We do not question the propriety of solemnizing the marriage of a party who has been shown to be innocent in divorce proceedings, but we urge upon the ministers the duty of withholding sanction from those whose divorce has been secured on other than Scriptural grounds."¹

In 1907, after endorsing the Inter-Church Conference on Marriage and Divorce, the following action is recorded:

"We express our detestation for frivolous divorce, and we urge our ministers to make strict inquiry, in the case of strangers or of divorced persons applying to them for marriage, to discern whether, under the laws of morality and charity, they are worthy of entering again into that relation from which they may once have been severed."²

No further action was taken until 1919 at which time the following resolution was adapted.

"WHEREAS, The breaking up of an alarmingly large number of American homes is indicated by the fact that America leads the Christian Nations of the world in the ratio of divorce to marriage:

"Be It Resolved: That the Council urges ministers so to work and teach that membership in the Christian Church shall be a guarantee of conscientiousness and intelligence about the duties of home life.

Be It Further Resolved: That we urge upon our ministers increased care in the scrutiny of the records of divorced people seeking remarriage.

"Be it Further Resolved: That we urge an amendment to our Federal Constitution that will give Congress power to legislate on all questions of marriage and divorce."³

No action seems to have been taken since 1919.

¹ *Ibid.*, 1901, p. 39.

² *Ibid.*, 1907, p. 403.

³ *Ibid.*, 1919, p. 41.

Inter-Church Conference on Marriage and Divorce

As a result of the initiative taken by the Protestant Episcopal Church in 1901, the Inter-Church Conference on Marriage and Divorce was called in January of 1903. Three Churches responded to the call, namely, the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian Church in the United States. A permanent organization was effected, but on account of the limited representation of Churches the following resolution was the only action taken:

"WHEREAS, This Conference deems it inexpedient to take definite action on the general subject before it, until a larger representation is secured from the different churches of the country; therefore,

"Resolved, That the Executive Committee communicate, in its discretion, with the Christian churches not yet represented in the Conference, with a view of securing the appointment of representatives."¹

At the next meeting held in November of the same year, nine Churches were represented. Besides those represented in the first meeting, there were delegates from the Alliance of the Reformed Churches holding the Presbyterian system, the General Synod of the Evangelical Lutheran Church, the Baptist Churches, the Congregational Churches, the Unitarian Churches, and the Reformed Presbyterian Church, General Synod.

At this conference the following resolutions bearing directly on our subject were adopted:

"Resolved, That as a step towards greater carefulness in the matter of remarriage after divorce, the several churches are earnestly urged to take such action as commends itself to their judgment and lies within their power to enforce upon ministers and members, through the discipline of each church.

¹ *Documents of the Interchurch Conference on Marriage and Divorce*, p. 6.

"*Resolved*, That the Executive Committee take into consideration the question as to what practical methods can be devised to educate the public conscience with a view to securing the objects of the Conference."¹

At a third conference held in March, 1904, ten Churches being represented, a resolution as follows was adopted:

"*Resolved*, That in recognition of the comity which should exist between Christian churches, it is desirable, and would tend to the increase of the spirit of Christian unity, for each church represented in the Conference to advise and, if ecclesiastical authority will allow, to enjoin its ministers to refuse to unite in marriage any person or persons whose marriage, such ministers have good reason to believe, is forbidden by the laws of the church in which either party seeking to be married holds membership."²

Following are two resolutions adopted at the suggestion of the Committee on National and State Legislation:

"*Resolved*, 1. That the report of the Committee on National and State Legislation be recommitted to the committee for further inquiry, and for suggestions as to the best methods of securing such uniformity of law and usage among the churches as may tend to secure legislative harmony.

"*Resolved*, 2. That the Executive Committee be authorized to prepare and issue, in their discretion, a declaration and appeal to the public as to the sanctity of marriage and the grave dangers of existing laxity through the frequency of divorce."

The Executive Committee was directed to take into consideration some plan for local organization among the clergy, with a view of securing uniformity of action on marriage and divorce.³

¹ *Ibid.*, p. 10.

² *Ibid.*, p. 13.

³ *Ibid.*, p. 13.

In 1910 the work of the Inter-Church Conference on Marriage and Divorce was transferred to the Committee on Family Life of the Federal Council of the Churches of Christ in America and the old organization ceased to function.

In the Annual Reports of the Federal Council we can find but one report from the Committee on Family Life, in the year 1914. This report was of a general character and contained no formal resolutions.

The denominations surveyed are but a few samples of a long list which might have been included, but there is no reason whatever to believe that a more extensive group would have shown any different results.

Upon the basis of the digest of the legislation of these churches and of the Inter-Church Conference on Marriage and Divorce here presented some fairly clear-cut conclusions can be drawn.

It is apparent that with the knowledge of the growing frequency of divorce the churches have become increasingly active in the matter of enactments on the subject, and the trend is unmistakably in the direction of greater stringency. The efforts have been almost wholly reactionary. They have sought to oppose the tendencies revealed in the rising divorce rates by increasing the restraints of ecclesiastical control. They have progressed from the passing of resolutions deploring the situation and "viewing with alarm" to the enactment of the most rigid laws possible within their sphere of power.

That some results may have accrued from this concerted action, especially among the members of the several communions and among church adherents generally, is probable, though limited, but the impotency of the churches through negative restraints to check the tide of divorce, as we found to be the case with reference to civil

enactments, is demonstrated by the accelerated velocity of the divorce increase during the very period of their augmented efforts at its suppression.

The most important observation which can be made upon the results of our studies in the last three chapters is that the divorce movement is profoundly social in its character; that it lies somewhere back of the law both civil and ecclesiastical, in the great social trends of the times; that secular traditions, ecclesiastical authority, and civil sanctions are relatively powerless to effect its control. Divorce is an effect of marital dissolution, and the causes of marital dissolution lie deeply imbedded in human nature and in the social order. Until these causes are investigated, diagnosed, and understood, most of our efforts at reform are likely to continue to be as unavailing in the future as they have been in the past.

PART II
The Interpretation

C. EXTERNAL INFLUENCES AND PRESSURES

D. INTERNAL TENSIONS AND STRAINS

CHAPTER TEN

INTRODUCTION TO PART II—THE EXPLANATION

WE NOW HAVE REACHED THE STAGE IN OUR STUDY WHEN it becomes desirable to enter upon the positive analysis and discussion of the real causes of divorce and to explain the conditions and factors which result in the present divorce trend.

The Failure of Existing Controls

We have noted in previous chapters that the agencies which purposively have sought to combat and to restrain divorce are among the most efficient organized forces of social control, namely, the State and the Church, but they have proved powerless to accomplish the end sought. While the State, to be sure, to whose jurisdiction the whole matter now is subject, has recognized the legal right to divorce under certain prescribed conditions, it has done so rather reluctantly. So far as our own American situation is concerned, laws have been enacted in every State in the Union with the avowed intent to regulate divorce, varying in degrees of strictness in every phase of the subject, and ranging, so far as causes are concerned, from eleven valid grounds in four States to absolute prohibition in one. But while the laws in the several States differ in specified causes and in matters of procedure, they agree in their restrictive purpose, and there has been a decided tendency, as we have noted, to tighten rather than to loosen these restrictions. Juristic interpretation and procedure with few exceptions have required a more strict conformity to the law, despite the often-repeated assertions to the contrary.

At the same time ecclesiastical divorce legislation in the great Protestant bodies, a product of the period under review, has increased in stringency concomitantly with the rise of the divorce rate. A considerable proportion of Protestant clergymen continue vehemently to decry divorce as a sign of moral decadence, and many, even when no ecclesiastical enactment requires it, refuse to perform marriages in the case of divorced persons, except in the instance of the "innocent" party to a divorce obtained on "scriptural grounds." The doctrine of the indissolubility of marriage still holds in the Roman Catholic Church and divorce is denounced as undermining the foundations of the family.

In view of these facts this very remarkable situation now confronts us. The very reverse action is exhibited by the divorce trend. Despite these counter and inhibitory influences the divorce rate everywhere continues to rise with accelerated velocity.

This fact, it would seem, is the practical equivalent of a demonstration that marriage, like all other social institutions, is subject to influences within the social situation which do not depend for their operation upon statutes and are not subject to control, except within very narrow limits, by artificial means, or by external authority. Thus it is that institutions undergo transformations without human design or plan and become readjusted by means of social forces and processes to the changed conditions. This is so because, as we have said, they are not constituted by law, but are in the last analysis social usages and habits around which customary procedures develop and harden into statutes.

It was inevitable that the dynamic changes which are taking place in modern civilization should affect marriage externally and internally as it has affected other types of human relations, as, for example, the economic, the political, the moral, and the religious, and that readapta-

tion of marriage to the new conditions doubtless would occasion as much distress as has happened in these other spheres.

For this reason it should be quite obvious that it would be increasingly difficult to maintain and to enforce concepts about marriage and divorce which were evolved under conditions strikingly different from those which exist today. The traditional theories, however logical they once may have appeared to be, do not fit the present facts. Civil and ecclesiastical laws, representing as they do the preponderance of conservatism and of the reactionary and traditional elements of society, have operated to conform marriage externally to the ancient or medieval model—a relation based upon coercion of various types, and yet regarded as sacred because of its reputed sacramental or religious character.

All this has resulted in obscuring, and in diverting attention from, the real issues involved in the present domestic situation. Whether for good or ill the basis of modern marriage as a personal relation is shifting from necessity to free choice, from the formal to the ethical, from a relation preserved by external pressure to one maintained by internal attraction.

In an ever increasing number of instances marital relations between persons legally united actually are breaking down. Mutual affection, regarded today as essential to morally valid marriage, ceases to exist. Every tie upon which the law either civil or ecclesiastical sets the seal of its approval is severed. Whenever this condition arises the parties separate and except for the remaining legal bond the marriage is perforce dissolved. Sooner or later, as the case may be, one or the other of the parties, sometimes both, institute divorce proceedings in order to establish their independent status in law as it exists in fact and they employ whatever means the law itself makes necessary to that end.

Thus we witness the fact that institutional controls, reinforced by Church and State, are demonstrably ineffectual in preventing marital disintegration.

Inadequacy of Current Explanations

The statistics of divorce are very valuable to the student in acquiring a general knowledge of the volume and distribution of completed cases of marriage dissolution in their chronological and regional relations. They display changing frequencies or trends and reveal the degree of institutional instability. The chief service which they render, however, is to indicate the presence and the relative effectiveness of causes or processes which are at work to produce the tabulated results. But they never can be trusted as an accurate index of disaffection in wedlock. The more stringent the law, the more inflexible the traditional attitudes, and the greater the environmental pressures, the less likely are the figures to correspond with the actual number of estrangements and separations or to indicate accurately the amount of marriage failure. At best historical trends reveal only mass movements as purely objective phenomena and throw no light upon the subjective factors of internal disorganization which are the results of personal experiences. Unless these factors are investigated no real explanation of the trend itself is afforded. The case here does not differ from that in any other subject. The statistics of crime may indicate the size and the seriousness of the problem to be dealt with but they do not reveal the nature of crime nor the methods of its elimination. The study of the statistics of divorce, then, is merely the point of departure for the study of the problems the presence of which they merely disclose.

For similar and equally valid reasons an analysis of the legal grounds of divorce or the consideration of other legal phases of the subject may show prevailing attitudes or efforts at control but it is of little value in the effort to

discover the causes of divorce or the reasons for the rising rate. In fact the emphasis upon the legal aspects may tend to obscure the actual internal conditions and may divert attention from them to the overt facts of the law's violation or evasion. Thus legally coerced marriages may appear outwardly to be stable while inwardly they are dynamically unstable. This creates a situation which is far from satisfactory and which does little or nothing to relieve the tensions. Where marriage relations become intolerable, from whatever causes, some means of relief usually is found regardless of what the statutes may be. In case divorce is forbidden, recourse may be had to annulment on some technical ground and the decree becomes the practical equivalent of divorce, or those less scrupulous who lack either the disposition or the means to circumvent the law may evade it by recourse to new or clandestine relations. It is absurd to assume that South Carolina solved the problems of domestic discord and of sexual irregularity by ignoring them through the method of prohibiting divorces. But here we are not left to our theory as to the facts. Judge Stevens states it thus: "South Carolina has found it necessary to regulate by law the proportion of his property which a man may give to the woman with whom he has been living in violation of the law. As late as 1890 the courts were called upon to apply this law in order to protect the rights of the wedded wife and her children, in a case in which it appeared that both the husband and the wife had been living in adultery since the separation."¹

Where statutory provisions are made for divorce either the necessary or the most feasible ground is utilized. Ample confirmation for this assertion is found in the facts set forth in Chapter VII where we have shown that there is no causal connection whatever between the number or the

¹ *The Outlook*, June 8, 1907, pp. 288-289. Cf. also KITCHIN, S. B., *History of Divorce*, p. 222.

nature of legal grounds for divorce in the several States and their respective divorce rates, with the exception of New York and the District of Columbia where absolute divorce is granted only for adultery. Approximately 60 per cent of all divorces in the United States in sixty years have been granted on the grounds of cruelty and desertion. The citizens of New York are not thereby proved to be more sexually immoral than those of other States unless compelled to be so, either actually or confessedly in order to secure legal sanction for divorce. Chancellor Kent after a long career on the bench of New York said that he believed that adultery was committed for the very purpose of obtaining divorce, because it could be secured on no other ground.¹

No more satisfactory is the explanation based on moral decadence. Those who indict the American people on the ground of increasing moral depravity should be required to prove their claim. Should they be able to do so, however, it would place them in a very sad dilemma. They would thereby be compelled to concede the defeat of the moral forces of society. We do not believe that this pessimistic outlook is justified. It is doubtless true that moral values have shifted but this does not necessarily argue their decline. On the contrary it is quite possible to contend that there has been a definite moral advance. This is not to deny the fact that many divorces are the result of moral degeneracy—that is conceded freely. But it also may be true that the more exacting ethical demands in matrimony may render intolerable conditions which formerly were condoned, and that many divorces are to be accounted for as the result.

Some years ago Lord James Bryce after a careful survey of American marital conditions said: "On the whole, therefore, there seems to be no ground for concluding that the increase of divorce in America necessarily points to a

¹ Cf. Judge Stevens, *ibid.*, p. 288.

decline in the standards of domestic morality,"¹ and many other more recent writers have expressed the same view. It has been pointed out that a high divorce rate has a definite correspondence with the high ethical marriage standards of American women.

While no one could assume that the mere expression of opinion one way or the other, in the absence of proof, could possibly settle the matter, what we wish to emphasize is that the thesis that increasing divorce is explained by the breakdown of morality is challenged both as to the facts and as to the process involved, and that the counter-thesis is set up that an appreciable number of divorces represents an increasing ethical revolt against conditions which need not be worse in order to account for the results if moral sensitiveness has increased.

Professor Howard, seeking for the causes of the divorce increase inquires: "But do not bad marriages really go to the heart of the problem? Marriages not legally, but sociologically bad, are meant. They include frivolous, mercenary, ignorant, and physiologically vicious unions. They embrace all that would be forbidden by Francis Galton's science of Eugenics; all that might in part be prevented by a right system of education. Indeed, bad marriages are the cause of the clash of ideals referred to. At present men and more frequently women enter into wedlock ignorantly, or with a vague or low ideal of its true meaning. The higher ideal of right connubial life, of spiritual connubial life, often comes after the ceremony. It is *ex post facto*; and it is forced upon the aggrieved by suffering, cruelty, lack of compatibility, prostitution within the marriage bond. An adequate system of social and sex education would tend to establish such ideals before the ceremony. An ounce of prevention is worth a pound of cure."²

¹ *Studies in History and Jurisprudence*, p. 850.

² *Publications of the American Sociological Society*, Vol. III, p. 179.

We are not disposed in the least degree to question the validity of "bad marriages" as a cause of divorce. Professor Howard rightly has laid great emphasis here. We should be willing to include legally as well as sociologically bad marriages as a cause of many divorces. It is only as an interpretation of the rapid increase of the divorce trend that we think Professor Howard's explanation does not "go to the heart of the problem." Is it not here, in fact, putting effect for cause? It is difficult to believe that sociologically vicious unions are more numerous than formerly, but if they are, there must be some cause for the phenomenon. Is it not a fact, rather, that the "mighty forces of spiritual liberation" are simply revealing more and more the presence of such unions? Is it not true that the pressure due to changes in the social environment is operating to render sociologically bad marriages unendurable, whereas under former conditions they were not discovered to be bad, and even to make it more difficult for sociologically good marriages to survive?

Professor Cooley's observation is to the point: "The relaxation of the family is due, then, to changes progressive on the whole, but involving much incidental demoralization; being in general those arising from a somewhat rapid decay of old traditions and disciplines and a consequent dependence upon human impulse and reason.

"The evil involved is largely old evil in a new form; it is not so much that new troubles have arisen between husband and wife as that a new remedy is sought for old ones. They quarreled and marriage vows were broken quite as much in former times as now, as much in England today as in America: the main difference is in the outcome."¹

With the above observations before us it is obvious that the usual explanations for divorce and for its growing frequency are quite inadequate and unsatisfactory and

¹ *Social Organization*, pp. 370-371.

even sometimes erroneous. We shall be obliged, therefore, to push our inquiries much farther into the region of both individual and social causation if real causes are to be discovered and if a more adequate interpretation is to be devised.

Disintegration as a Process

The search for causes is not a simple nor an easy matter. It is beset with difficulties both of methodology and of fact. First of all, the particularist or unilateral method of viewing the divorce situation must be ruled out. This method in general consists in fixing attention upon a single cause or factor and in regarding it as adequate to explain the entire phenomenon or at least the major part of it. This method has resulted in the process of "factorizing" a problem by resolving it into all the factors which different persons may claim to be involved in its causation and then evaluating each one separately, that is, by estimating what proportion of the effects are attributable to each alone. Many classifications of causes are built upon this idea or plan. But the time has passed when we can enumerate a list of specific and often unrelated causes, assigning to each a definite percentage of the effects and then by the simple method of the addition of these percentages arrive at a satisfactory or complete explanation. The matter is not so simple as that. Social phenomena of any sort are highly complex. Any social problem is seen today as a total situation in which the various phases are integrated and reciprocal. Each one is a function of every other one.

We must then substitute the "organic" or "functional" view for the particularist, and endeavor so far as we are able to "see things whole," that is, to see them in process rather than in a group or series of discrete and detached episodes. This applies to the study of marriage disintegration whether we view it from the side of its institutional

or impersonal character, or from that of its personal relationships.

This organic view, however, does not preclude the particularist approach. It may indeed be necessary in the consideration of so vast and complicated a subject as divorce to single out one causative factor after another and to study each in turn in order to obtain any comprehensive or synthetic understanding of the whole. This we may do safely, provided only that we keep in mind that either the marriage institution or any individual marriage is an evolving aggregate in which mutually interdependent and interacting factors at any time may be either cause or effect.

On the factual side, in the next place, we must get rid of the superficial and widespread notion that divorces are due to specific or spasmodic acts or incidents. If this were the case the common complaint that divorces frequently are granted upon frivolous or trivial grounds would be justified, for such trifling incidents often are alleged. This mistaken view arises, or at least is facilitated, by the emphasis upon "grounds" as the basis of legal procedure. For the purposes of the court in determining whether or not a divorce may be granted, as matters now stand, one party or the other must be found to be guilty of concrete and specific acts of adultery, of cruelty, of desertion, of drunkenness, and the like, which are the specified grounds in the laws of the State of residence. Hence it is legitimate to state that these are the things which destroy marriages,¹ but it is now necessary to go more deeply into this explanation. Cases are rare indeed in which a single fact or event destroys a marriage. Divorce in reality is the terminus of a process of disorganization. A specific incident like an adulterous act or one of extreme cruelty may constitute the technical ground for the decree but such events are rarely if ever detached from

¹ Cf. *supra*, p. 16.

a sequence of other acts or issues of which they in fact are the results. Thus the "causes," so-called, represent episodes in a process which results ultimately in the complete destruction of the marriage.

Or, to put it in another way, a marriage is more than the "free association" of two persons of the opposite sex. It is, by analogy a "social organism." It is an integrated complex of relations which represents in a greater or lesser degree an assimilation of affections, of ideas, of attitudes, of behavior patterns. As a process of integration it begins in courtship, acquires social recognition in the nuptial ceremony, develops mutual coadaptation and establishes ideally a lifelong union. Disintegration is the reverse process, in which tensions progressively destroy accord, and which when complete ends in separation and ultimately in divorce.

On the basis of this analysis it is possible to assert that there is but one cause for divorce, namely, the culmination of the process of marriage disintegration of which specific incidents, serious or trivial, are but the indices of its regressive trend.

The study of the internal factors and processes of the disintegration of marriages, then, has a far greater probability of disclosing a real understanding of the divorce problem than any study of specific causes could have. It must never be forgotten, however, that these processes do not work in a vacuum; that they cannot be studied apart from the reactions of people to their environment as well as to each other. No matter how effective emotional tensions may be in disrupting internal cohesion, the marriage itself may not formally be destroyed if economic necessity or other social or institutional pressures prevent it. The organic view requires that all the factors internal and external shall be integrated into a composite picture of the synthetic process.

The Processes of Culture Change

As already indicated the phenomena of divorce constitute but one aspect of the numerous and diverse effects produced by dynamic changes in modern civilization. It is not, however, an independent phase which can be considered apart from the whole movement. It is intricately interwoven with other phases in the larger social fabric. Perhaps it will throw some light upon the inherent nature of our problem if we state the whole matter in terms of the interdependent, and at the same time, the interacting character of the elements of a general "culture complex" or "constellation."

Cultural anthropologists nowadays make a distinction between material and adaptive culture. Material culture consists in that large portion of our physical environment which is composed of the material products of human achievement, such as vehicles, roads, machines, foodstuffs, raw materials, manufactured goods, and other substantial articles, conspicuous among which are our economic products and our accumulated economic surplus. Adaptive culture is that phase of our non-material culture consisting of language, ideas, beliefs, usages, customs, techniques, *mores*, laws, institutions, and the like, which largely are conditioned by, and the result of, psycho-social adjustment to material conditions.

It is important to observe that all the elements of a culture complex are interdependent, so that changes within any trait, either of the material or of the adaptive culture effect readaptations in all other correlated parts. It frequently happens, therefore, due to discoveries and inventions, that changes which occur in the elements of material culture, since in the aggregate these elements constitute the environmental basis of the adaptive culture, require and bring about the readaptation of the adaptive culture traits to the changed conditions. It is to be expected also that any

changes in the *mores* or in the constitution of one social institution would be reflected in corresponding changes in closely correlated institutions.

The problems created by this clearly recognized process of interaction is due mainly to the fact that the various elements of culture change at unequal rates. When a rapid or radical change occurs in some phase of the material culture, as for example, a revolution in the methods of production, or in certain aspects of the adaptive culture, such as the reconstitution of certain attitudes or beliefs, then readjustments in affected aspects of the adaptive culture must be made. But this requires time. An interval occurs, sometimes a long one, if readaptations are difficult to make on account of mental conflicts, the inertia of tradition, or other inhibiting factors, during which there is conspicuous maladjustment. This is what Professor William Fielding Ogburn very aptly has called "the culture lag."¹

Now marriage, as a social institution, is a phase of adaptive culture and as such is affected directly or indirectly by changes, both in the material and in related aspects of the adaptive culture. From this point of view, then, we may regard the phenomena of divorce in many of their aspects as manifestations of the culture lag, that is, as evidences of maladjustment due to the fact that the readaptation of marriage, as an interdependent phase of adaptive culture, has not synchronized with fundamental changes in other aspects of related culture.

For purposes of analysis it is desirable to distinguish two types of effects which this statement of the problem exhibits, both of which will require somewhat extensive study:

First. It will be observed that the direct effects produced by alterations in other related aspects of culture must be regarded largely as external. They constitute a cluster of

¹ Cf. *Social Change*, Part IV.

environmental influences or pressures which are exerted in one way or another upon the institution of marriage from without. They tend to induce, or at least they make desirable, certain readjustments of marriage in conformity with such alterations. Thus we may study the changes in the physical and social environment in order to determine what effect they have produced, or are producing, in regard to the stability or instability of marriage as it is at present constituted.

In the three chapters immediately following we shall survey, therefore, (1) the developments which have taken place in economic production regarded as the chief determining aspect of material culture, (2) the progress of liberalism, and (3) the evolution of ethical and religious ideas and attitudes, as the most influential phases of the adaptive culture, in order to discover what part they have played in reshaping the marriage institution, and in producing the present divorce trend.

Second. Environmental pressures do not exhaust their influence by producing external effects. They result indirectly either in affecting internal changes in ideas and attitudes or at least they make it more probable that internal changes arising from whatever cause may prove to be more effective in creating maladjustments than formerly—in this case an increase in domestic discord. This explains why internal marital tensions and strains have become such important factors in the present divorce situation, while formerly either they did not exist to the same intensity or extent, or they were not the disturbing influences which they are today.

Stated more concisely, while external factors may define or limit the scope within which internal factors may function, they do not determine their nature. Human marriage as we have seen has a biological and an anthropological origin, and a cultural, a legal, and an institutional history, but intrinsically it is something more than a form

or structure. It is a relation between persons involving physical, mental, and moral adjustments. It is a process of integration of all these elements into a collective behavior pattern. It is the tensions due to a wide variety of conflicting cultural interests and personality traits which arise within this adjustment process which are the essential causes of marital disharmony which tend to result in separation and divorce. It is these human-nature aspects which so largely until recently have been overlooked and have not received adequate consideration. Nevertheless they are the dynamic impulses which society has proceeded to regularize and to control, at first through custom and tradition but later by conscious and purposive legal methods. Because this latter phase of the subject has been so conspicuous historically and because of the formalizing tendencies of institutional development, it has acquired its dominant significance and marriage came to be regarded as a social entity around which religious and legal sanctions and safeguards grew up and came to be established.

With the diminishing effectiveness of these outer controls, due to social change, and partly as a result of these same changes, the inner factors become more effective. Thus they come to possess a new and vital importance which cannot today be ignored. They must be studied and evaluated. In them will be found an equally, if not more basically, significant source of our present marriage disorganization.

Following the chapters devoted to the consideration of External Environmental Pressures and Controls, therefore, we shall consider the most conspicuous sources and phases of these internal tensions and strains, namely, (1) changing concepts of marriage, (2) sexual maladjustments, and (3) conflicting behavior situations and processes.

C. External Influences and Pressures

CHAPTER ELEVEN

ECONOMIC CHANGE

The Problem of Social Adaptation

THE PHENOMENA WE ARE TO CONSIDER HERE LIE WHOLLY within the domain of science and are as capable of rational interpretation as are those of any other kind. While the data of the social sciences differ in their nature from those of physical and biological sciences, the methods in dealing with them are essentially the same; they are no less the effects of adequate causes than are the data in other spheres simply because they are more difficult to describe. The continuous readaptation of organisms to environment is the law of survival in the realm of the organic. It is, by analogy, also the method of culture change. Social institutions in no way are exempt from the operation of this same law. They do not maintain a detached and unconditioned existence apart from other social realities. They must adapt themselves to their cultural environment or perish. Alterations in their environment require readaptations to the changed conditions. Failure to make these readaptations results in social maladjustments. Thus throughout the entire course of human social evolution the institution of marriage has undergone modifications of progressive character in conformity with the changes wrought in the general social environment.

A clear comprehension of this process precludes the consideration of any social institution apart from other aspects of the culture complex or total social situation. Thus the elements of the culture environment exert upon

institutions constant pressures which, to a greater or less degree, modify and ultimately determine their form, character, and organization. If the pressure is constant and uniform, due to a relatively static condition, the readjustment is comparatively simple and easy, and, over a long period, the changes are effected imperceptibly and without social disruption, but if alterations in the environment are sudden or cataclysmic, maladjustments become conspicuous and a period of acute disorder within the social institution ensues.

Now it is under circumstances of this latter type that our problem presents itself. The phenomena of divorce appear largely in the nature of social maladjustments in the lagging readaptation of the institution of marriage to a changed social order which is, in turn, the product of radical and basic changes in the industrial system. The interpretation is rendered the more difficult by the fact that economic conditions since the Industrial Revolution have remained effectively kinetic and are undergoing continuous change. Thus the attempt to present an adequate interpretation of the effects of a constantly changing environment upon a developing institution is a difficult feat in social dynamics. Before any such analysis can be completed it will be partially out of date. Nevertheless the main characteristics of the present situation may be stated.

The Economic Factor

No one today will question the importance of the economic factor in social interpretation. The concept of economic determinism has rendered a very useful service in rectifying the erroneous and visionary conclusions of inexperienced social interpreters. It has demonstrated the futility of attempting the explanation of any social phenomenon on an ideological or theological basis. It has rendered impossible any exposition of a social fact or collective behavior process in terms of mere volition.

Certain economic writers, however, approaching the subject of social interpretation from this one angle, have become so enamored with the theory that they have offered the economic factor as the sole determining cause of all human experience. They have sought to show that "The sum total of the relations of production constitutes the economic structure of society—the real foundation, on which rise legal and political superstructures and to which correspond definite forms of social consciousness. The mode of production in material life determines the general character of the social, political and spiritual processes of life."¹ Thus all other factors of social life, of whatever sort, ultimately and mediately are seen to be determined by economic processes and this affords an all-sufficient explanation.

With these exaggerated, one-sided and particularist views, the social scientist, of course, cannot agree. This unfortunate overemphasis has caused much acrimonious debate, and has delayed the general acceptance of basic truths involved, but it has not obscured ultimately the value of a theory and method of interpretation, more liberally construed, which seek rational explanation in terms of causal and reciprocal relations between and among phenomena. In vindicating this type of procedure we are not assuming a materialistic basis for society, but merely proposing that the method of modern scholarship should be applied to the facts of human experience. Due allowance must be made for a wide variety of psychological and cultural factors, and these must be considered in any comprehensive analysis, but no interpretation of any form of human relations which omits the economic factor can be either accurate or complete.

Our specific purpose here, however, is not to demonstrate the value of this method of interpretation, important as it may be, but rather to appraise the effects of economic

¹ MARX, KARL, *Critique of Political Economy*, p. 11.

factors upon the problem of marriage disorganization as an incident of institutional readaptation.

Throughout human history both the issue and the method of acquiring subsistence have modified and conditioned other incidents of social life. Whatever the state of culture, first of all, men must live, and social achievements bear a direct ratio to economic success and to the amount of surplus energy left over after economic wants have been supplied. Other conditions being favorable, wherever food has been relatively abundant and easily acquired, an economic overplus has been accumulated, a "pleasure or surplus economy" has replaced "a pain or deficit economy," and progress in social well-being has tended to be steady and relatively rapid. According to Lewis H. Morgan, "The great epochs of human progress have been identified more or less directly with the enlargement of the sources of subsistence."¹

But it is in the processes, rather than in the success, of economic production, as Marx patently has pointed out, that the most radical changes have taken place and consequently the profoundest transformations in other social phenomena have been produced.

Of very great significance, therefore, in relation to our subject, is the Industrial Revolution which has resulted, and is continuing to result, in the most radical change in our material culture since the dawn of history. From the earliest period of which we have archeological or historical knowledge, down to a little more than a century and a half ago, men made their living by personal and direct contact with nature. They foraged, hunted, fished; they domesticated animals and they developed agriculture and became rooted to the soil. Single-handed or group-wise they were directly dependent upon nature for their subsistence. Feudalism was a system of land tenure and the serf tilled the ground. All early civilizations were agri-

¹ *Ancient Society*, p. 19.

cultural, and the pioneer in our own early history, as he settled in New England, and later as he pushed back the Western frontier, was dependent mainly or exclusively upon his own effort in wresting his living from the earth. He produced his food and clothing, and erected his own shelter with his own hands. He was independent. His relations were with nature.

Then came the Industrial Revolution through invention and the substitution of mechanical for muscular power. Machines were constructed, housed in factories and propelled by water, steam, and electricity. Capital and workmen became concentrated, population redistributed, and industrial cities grew up like magic. Production became socialized. Those engaged in industry became dependent upon each other. Division and segregation of economic functions made industries interdependent. We live today within a veritable network of interrelated and specialized activities each dependent upon the uninterrupted functioning of all others. If one stops the whole system seriously is imperiled. Within this system we make our living indirectly. We work at our specific tasks and contribute our share to the total collective output, but we purchase the articles we consume and our contacts are not with nature but with other people. We may earn our living but we do not produce it.

Even the rural pattern of life is passing. The farmer no longer produces exclusively the articles of his own consumption. He raises wheat and cattle and other commodities for the market and purchases his food, clothing, and other goods of his more elaborate consumption at the store. His prosperity is conditioned far more by the prices he receives for his produce and the cost of the commodities he consumes, in other words, upon social conditions, than upon his own energy and skill.

At least three conspicuous and interrelated results have accrued from this basic change in productive processes.

First, it has increased production enormously. Machinery and the efficient organization of industry have multiplied the productivity of the industrial laborer many times within the last fifty years. With the aid of agricultural machinery one man can produce as much wheat today as several could two generations ago. Existing industries have been transformed and gigantic new ones, such as the electric, automobile, moving picture, radio, and aviation, scarcely dreamed of a half century ago, have sprung up. All this has resulted in rapidity and volume of wealth production and accumulation hitherto unknown. The economic surplus created within a century staggers the imagination. We talk now in terms of billions.

Second, it has industrialized society. All economic writers characterize this as the industrial or machine age. Measured in terms of dollars the value of manufactured products including clothing, furniture, carriages, etc., in 1922 was \$68,418,773,000 as compared with agricultural and animal products of \$11,273,000,000,¹ while the number of persons engaged in industry in 1920 including proprietors and officials, lower-salaried employees and servants, and industrial wage earners was 25,563,641 as compared with 10,642,345 farmers and farm laborers, whereas the corresponding figures in 1879 were 4,613,506 and 5,886,225 respectively.² These figures indicate the transformation which has taken place in the occupations, conditions of employment, household economy, living standards, and general economic well-being of approximately two-thirds of the families comprising our 122,000,000 population.

Third, it has changed fundamentally the basis of human relations. As a result of the revolution in economic processes, Western civilization has undergone and is undergoing still further the profoundest change in human relations ever experienced by mankind. President Herbert

¹ *Statistical Abstract of the United States* for 1930, p. 291.

² BOWARD, JAMES, S. H., *Problems of Social Well-Being*, p. 610.

Hoover says: "We are, almost unnoticed, in the midst of a great revolution, or perhaps a better word, a transformation in the whole super-organization of our economic life. We are passing from a period of extremely individualistic action into a period of associational activities."¹ Thus for an ever increasing portion of the population, relations are shifting from nature to people; from those which were direct and vertical to those which are indirect and horizontal. We are ceasing to be independent and are becoming increasingly interdependent.

Familiar as we are today with the closely integrated character of all the elements of civilization it was to be expected that such revolutionary changes in the whole industrial basis of society should be accompanied by transformations in the adaptive culture. Social institutions can no more remain unaffected by this changed economic environment than can biological organisms in a changed physical environment. With the change in the material basis of existence the functions of social institutions change and, as in biology, change of function is followed invariably by change in constitution. The nature and rapidity of this change depends upon the character of the institution, its facility of adaptation, and the influences of other agencies in accelerating or retarding its readjustment. From the effects of these influences the institution of marriage enjoys no privileged immunity.

Before we turn from these general considerations to the more concrete aspects of the subject we should note that whereas this great transformation began in the latter part of the eighteenth century, and whereas its effects are traceable throughout the early history of the Republic, the period of the most rapid development has taken place since the Civil War, and thus practically coincides with the period of the rapid rise in the divorce rate. This fact

¹ Quoted by KLEIN, JULIUS, Chap. IV, p. 104, in *Whither Mankind*, edited by C. A. Beard.

is sufficient to furnish a strong presumption in favor of a close connection between the two sets of phenomena, if not the more positive relation of cause and effect. It is therefore our purpose to examine a few of the chief aspects of this modern economic movement in order to ascertain, as far as we can, their effects upon the stability of marriage.

Costs of Economic Progress

One of the most significant results of our modern economic life is the stress and strain it lays upon the individual through the social maladjustments which the rapidity of change inevitably creates. Civilization has been speeded up and we live at an accelerated tempo. Thus the social equilibrium has been disturbed. Many elements of the social mechanism have been thrown out of adjustment. It is a law of mechanics that speed increases friction. March an army at double-quick and many soldiers, competent to maintain the regular tread, will fall out of the ranks. In like manner there are costs of social progress and the higher the rate of progress the greater is the social burden which these costs entail. While economic progress means ultimately increased social well-being, and therefore is of unquestioned social good, it does intensify the selective process by which it is attained, and social debris strews the path of advance. This is illustrated within the productive process itself. Improvement involves sacrifices. The sudden introduction of power machinery in industry was accompanied at once by enlarged production, greatly to the advantage of society, but at the cost of unemployment through the dislocation of labor, or what is now called technical unemployment, thereby increasing poverty while it multiplied wealth, and creating a host of other serious economic problems of like character. There are few social gains which do not involve similar consequences.

Viewed in this light many students of society are pointing out that our social problems are to be regarded as

maladjustments to a rapidly changing social order, that is, as costs of progress, rather than as the traditionally assigned results of moral decadence. A striking statement by Doctor Enrico Morselli illustrates this point of view. He says:

"The relation between the number of suicides and the general economical conditions is demonstrated by the continuous growth of the former in the century which beyond all others has witnessed the development of commercial relations and the perfecting of the industrial arts by science. It seems almost as if the character of an epoch is reflected in the character of that phenomenon of our social life, namely, the increase of psychological relations; nay, this reflection is such that by the variable average alone, either of the mad or suicides, or of criminals, the economical well-being of a year or of a country can be determined."¹

This may be somewhat of an exaggeration, for other factors doubtless are involved, but unfortunately too often the waste by-products of an advancing civilization have been mistaken for signs of social deterioration, and remedial measures based on this hypothesis often have hindered a process they were designed to help.

In this connection it is at least interesting to observe that precisely the same trends are exhibited in the divorce rates which are found in suicide, insanity, and crime. The number of divorces has risen steadily along with the increase in material advancement in America, and Professor Morselli, with equal assurance, might have included divorce among his indices of general prosperity. The assumption that all these phenomena, in certain respects at least, are attributable to the same cause seems to possess a considerable degree of probability. Conditions of life which strain the mental and nervous constitution to the breaking-point are likely to produce pathological results in

¹ *Suicide, An Essay on Comparative Moral Statistics*, p. 152.

behavior situations generally. Thus in multiplied instances it is probable that these conditions both induce and intensify discord within the domestic circle, and thus increase the likelihood of divorce.

Further aspects of this subject will be treated under other headings.

Modern Standards of Living

Improvement in living conditions is one of the most outstanding achievements of economic advance. Surplus incomes, which afford greater economic security and opportunity, more leisure for personality development, greater conveniences and comforts, are conditions which in the long run should prove favorable to better family life. Certainly no one would claim that low standards are conducive to human welfare or happiness. Only mental deficiency or a state of hopelessness can prevent those whose lot or station in life is appreciably below clearly perceived possibilities, from seeking to improve their social status, and chances of success today are greater than ever before.

But the process of achieving higher levels of living is beset with grave difficulties which affect marriage stability. It involves the question of ideals or values, that is, of things worth striving for, and also of the methods of attaining them. Moreover both of these are undergoing continuous transformation with much resultant confusion. But even if values and procedures were standardized there still would be certain costs involved in making the necessary readjustments of means to ends.

The rising standard of living thus far has subjected the domestic institution to a strain which is ever more burdensome. This is due, in part, to the greater cost of the necessary articles of consumption as well as to the necessity of purchasing many things formerly produced within the family itself, but, for the greater part, to the number and

nature of the increasing wants of the modern family. Luxuries of a generation or two ago in the way of food, clothing, dwellings, and household comforts, become necessities of the present. To these are to be added numerous modern indispensables such as automobiles and radios, not to mention additional expenses incurred for recreation and amusement outside the home, vacation trips, and educational requirements. This is quite as true in the country as in the city and applies in the main to the great middle classes. If wants multiply more rapidly than incomes, thwarted desires produce disappointments or debts, both detrimental to family stability.

But the struggle to achieve or to maintain a certain desired standard of living may not be due solely nor chiefly to the comfort and convenience secured. One of the chief incentives frequently is to be found in that pride of self-aggrandizement which seeks to equal or to outclass others in the same social scale. Appearances often outweigh comforts. The pressure of modern competition is felt not only within the domain of industry and commerce, but also within the realm of household economy and the scale of living, and it is a question where its results are more disastrous when it exceeds wholesome limits. The desire to keep up appearances or to excel becomes the ruling passion in countless families among the middle and well-to-do classes and expenditures are indulged in for the sake of gratifications that do not minister to the peace and happiness of married life. These often are quite beyond the legitimate and available means of the family and entail anxiety and often hardship. When ostentation is esteemed of greater consequence than domestic happiness and tranquillity then the price paid for the former often entails the sacrifice of the latter.

Many of these things increase the burden of family maintenance without adequate compensation. The situation overtaxes the ingenuity of the husband and wife to

keep expenditures within the income. It is failure in such cases, not to gain the needed subsistence and comforts, but to maintain a fictitious standard, that is one of the most prolific sources of nervous instability. Bank failures and stock-market crashes do not ordinarily mean want. They mean loss of income and of social prestige.

It is the conditions described above which exhibit increasing suicide, insanity, and crime, which often lead to the disruption of otherwise peaceful domestic relations. They exaggerate individual eccentricities and reveal defects of character which might not otherwise come to light. If they do not actually create friction, which they frequently do, they create conditions through overwrought nerves and irritable dispositions, favorable to the growth of infelicity and estrangement within the marriage bond.

Pressure of Modern Economic Life upon the Home

A variety of effects upon home life have resulted from changed economic production and the balance seems rather unfavorable to the working classes.

Under favorable conditions the joint income of husband and wife may be advantageous. It may enable them to elevate their standard of life, to acquire greater security, and to enjoy many other opportunities which increased income affords.

In certain aspects of the situation, however, there are unfortunate consequences which appear to be unavoidable. Modern industrial processes crowd upon the precincts of the home. The centralization of industry as a result of factory production has congested population in manufacturing areas. Workmen are forced to live in tenements and flats under crowded conditions, without sufficient fresh air and sunshine—circumstances not conducive to health, happiness, or good morals. Home life in such surroundings cannot be ideal. The feeling of permanence

is absent in the rented flat. Where the wife, and the children as soon as they are old enough, must seek employment in order to supplement the family income to the point of subsistence, the competence is secured at the sacrifice of home comforts. The family domicile is little more than a place to eat and sleep and its contribution to family well-being greatly is impaired. The situation is not improved if the work is brought into the home and the family abode is turned into a sweat shop. In most instances of course, families endure this strain but it greatly diminishes the probabilities of domestic security and permanence.

Where married women, through hard necessity, have been compelled to follow their work to the shop or to the factory, their absence from the home during working hours is a serious menace. Nervous and physical exhaustion diminishes their fitness for the functions of wife and mother. August Bibel draws a graphic picture of such a home: "Both husband and wife go to work. The children are left to themselves or to the care of older brothers and sisters, who themselves need care and education. At the noon hour the luncheon is eaten in a great hurry, provided that the parents have at all time to hasten home, which in thousands of cases is not possible on account of the shortness of the recess and the distance of the place of work from home. Weary and exhausted they return home at night. Instead of a friendly and agreeable habitation, they find a small, unhealthful dwelling, often devoid of light and air and most of the necessary comforts. The increasing tenement-house problem with the revolting improprieties that grow therefrom, constitutes one of the darkest sides of our social order which leads to countless evils, to vices and crimes. And the tenement-house problem in all the cities and industrial regions becomes greater each year, and embraces in its evils, ever larger circles—small producers, public officers, teachers, small shop-keepers, etc. The laborer's wife who comes home in the evening tired

and worried, has now new duties to perform. She must work desperately to set in order merely the necessities of her household. The crying and noisy children having been put to bed, the wife sits and sews and patches till late in the night. The so much needed intellectual intercourse and good cheer are denied her. The husband is quite often uneducated and knows little, the wife still less. The little they have to say to each other is soon said. The husband goes to the saloon and seeks there the entertainment which his home fails to supply. He drinks, and however little it is that he consumes, it is too much for his circumstances. Under these conditions he falls a prey to the temptation of gambling, which claims its victims also in the higher circles of society, and he loses more than he spends for drink. Meanwhile the wife sits at home and complains; she must work like a beast of burden. For her there is no rest, no recreation. Thus there arises disharmony. If, however, the wife is less true to her duties and seeks, in the evening after she returns home weary from her work, the recreation she is entitled to, then the home is left in disorder and the misery is doubled."¹

Thus the neglected house loses much of its home charm. The hard struggle for bread takes the romance out of life, and human idiosyncracies, which otherwise might not disturb the peace and happiness of the home are apt to be intensified until they become intolerable and the marriage bond snaps under the strain.

Among the more economically fortunate classes another grave situation presents itself. The relief of large classes of married women from the drudgery of household cares is one of the important consequences of modern wealth accumulation. It is a condition much to be desired for all married women. It represents or may become a great social gain. It is the hope of the improved family of the future. But it requires the development of new *mores* in regard to

¹ *Die Frau und der Sozialismus*, p. 124.

leisure and improved means of spending it wisely, and in wide circles this is taking place, but in others it is not.

Meanwhile with the passing of their occupation in the home, large classes of women come to regard economic dependence upon men as a necessary consequence, and they "look upon wedlock as an economic vocation. With them marriage tends to become a species of purchase-contract in which the woman barter her sex-capital to the man in exchange for life support."¹

"There are thousands of women of the mis-called 'better' classes who live in boarding houses and hotels in idle ease, or in homes where they are figure-heads, posing as their husbands' exalted head-servants, but whose only ambition in life is to be accredited with respectability, and whose only occupation is to render sex-service, mostly barren, to the husbands who furnish support as compensation.

"Such wives are not chattel-slaves, but willing dependents. They are not the drudging house-servants of old, nor the co-laborers of their husbands, as in our rural population. They differ in no essential from the kept woman, unless we have so low an estimate of the marriage state that we call the ceremony the essence, and a carelessly misplaced 'respectability' the final test of marriage morals."²

As a result, marriage here becomes little more than "legalized prostitution" and is, on the whole, thoroughly incapable of affording the happiness which the marriage relation is designed to impart. When "cupid yields to cupidity" the probability of marriage permanency very greatly is diminished. It is notably these classes which furnish a high percentage of the "divorce scandals in high life," render the subject revolting to all right-thinking people, and foster a reactionary attitude toward the whole subject of divorce. It is failure here rightly to discriminate, that causes reproach to be cast upon the worthy woman

¹ HOWARD, G. E., *History of Matrimonial Institutions*, Vol. III, p. 249.

² SCHROEDER, THEODORE, *The Arena*, December, 1905, pp. 586-587.

who seeks relief from conditions which destroy her happiness and compromise her womanhood.

Passing of the Economic Function of the Family

Throughout all history the social group-unit which we call the family has been a part of the economic structure of society. To a very large extent its nature and forms have been determined by the productive processes. Its chief function aside from race reproduction and the transmission of culture, is economic self-maintenance. Almost universally the household has been the economic unit of production. The various members were coördinated in group-wise activities and were bound together by mutual and interdependent relations.

The family pattern of industry was characteristic of our early period. Production necessary to family maintenance to which each member of the family contributed according to ability, was carried on largely by and within the household. Agriculture predominated. Meats, vegetables, fruits, and grains were raised chiefly for domestic consumption and came direct from pasture, garden, and field to the table. Butter and eggs were mainly by-products. Curing, canning, and preserving depended upon the dexterity of house-wives. Flax, cotton, and wool were produced by the men-folks and converted into clothing for all by the women-folks. Shoes were cobbled and furniture was made by husbands on rainy days. The children "did the chores" and otherwise assisted their parents. Women were of necessity home-keepers and their time and skill were required to the utmost. Even manufacture in the early days was largely domestic and the family remained an economic unit. Its members were still interdependent.

If these occupations were a tax on physical strength and endurance they were carried on with a minimum of nervous expenditure. If there existed incompatibility

between husband and wife, the care of children and the economic necessities of the family afforded the strongest possible incentive for adjusting the difficulties or of enduring the strain.

Now all this is changed. With the growth of modern industry the economic function of the family is passing away. The factory has superseded the family as the productive unit. It has disintegrated the family into individuals for productive purposes and has reassembled them in new combinations entirely independent of former relations.

Now that industry has gone out of the household and has ceased to be a family function it must be followed by members of the family into shop and factory if they are to contribute the share which formerly they did to family support. Otherwise they must remain at home as idle dependents upon the husband and father, which lays upon him the entire burden which had been borne collectively.

Thus many joint family incomes now are pools created by the several workers who contribute to the common family treasury their individual wages earned in separate places of employment. The members of the household are not, therefore, dependent upon each other in the old way; they scatter for their work which no longer centers in the home. The members of the family may cling together for other reasons and provide an adequate collective support, perhaps far better than before, but the group functions as a unit only in the sense of coöperating individuals.

Several results accrue from these changes.

Few persons, we presume, would contend that marriage based on economic necessity is an exalted concept. It is a form of coercion which ignores ethical considerations. The matter of marriage felicity is subordinated almost entirely to methods of making a living. Whether husband and wife are congenial is of far less consequence than their ability jointly "to make ends meet." It lowers the ideals

of marriage, or at least it retards the development of higher ideals based upon mutual love and moral freedom. Little is expected of marriage but the animal satisfactions of food, shelter, and sex.

The passing of this kind of pressure, therefore, is not to be deplored, but on the contrary, is to be regarded as promoting a higher type of marriage in which ethical values may predominate.

Meanwhile we should not overlook the fact that there are other conditions which affect marriage stability.

In the absence of economic compulsion the perpetuity of marriage must depend upon factors of internal cohesion. If spiritual ties are lacking or are inadequate to hold the family together it is likely to disintegrate. Under present conditions the home is maintained rather for its contribution to the amenities of life than as a necessity, and if these expectations are not fulfilled, that is, if the sacrifices involved become overburdensome in proportion to the services rendered the temptation "to break up house-keeping" is increased.

Furthermore, in contrast with former conditions the facility with which the individual can live today independently of family connections is an important factor. The new facilities afforded by the boarding house and the bachelor apartment, together with the opportunities of individual employment without regard to sex, make possible a life of "single blessedness." This influence is shown in the later age at which marriage is contracted, within certain groups, and probably also in an increasing number of persons who do not marry at all.

The same opportunities are open to the members of the broken family. If, therefore, other reasons do not exist for the continuance of family relations, economic ones scarcely will prove sufficient to hold it intact, and the divorce rate will register the result.

The Economic Emancipation of Women

Economic evolution, so far as it bears upon the subject of divorce, is producing no more significant results than in the economic emancipation of women. "Human beings" says Mrs. Charlotte P. G. Stetson, "are the only animal species in which the female depends upon the male, in which the sex relation is also an economic relation. With us an entire sex lives in a relation of economic dependence upon the other sex."¹ Whether this relation is due to "the peculiarities of women as sexual beings" or to causes inherent in our traditional economic system, or to both, to the fact itself may be ascribed the oppression and subjugation of women in all the various phases through which the institution of marriage up to the present has passed. On this basis property rights were established and maintained. In general, among preliterate races, and throughout the whole historic period among civilized peoples until recently, woman sustained to man the relation of personal property. Whether captured, purchased, or "given in marriage," the wife "belonged" to her husband. Formerly he might sell, lend, or destroy her according to his pleasure or advantage. Not only her person, but her children and the products of her toil, like that of the slave, were his. Marriage was in the main coercive. Rarely did the woman enjoy the privilege of consenting to motherhood or of choosing the father of her children. She may have been, often doubtless was, well fed, cared for, and protected, and her position may not always have been consciously oppressive, but her dependence dwarfed her personality, retarded her physical and intellectual development, and modified her to sex to the detriment of the race.

During the many centuries of her economic tutelage woman never has been an idle dependent. She always has borne her share of the world's work. In primitive society

¹ GILMAN (STETSON), *Women and Economics*, p. 5.

she was the chief producer. According to O. T. Mason she was the originator of most of the industrial arts.¹ Her labor at all times has been in demand and her value to her husband-owner often has consisted chiefly in that commodity. To this fact may be attributed, very largely, the persistence of the economic family. But her work was in the home. It was performed in connection with her occupation as wife and mother. It was her contribution to family maintenance. It was her vocation. The change in modern economic production which has transformed her work and has removed so much of it from her home, has reconstituted her status to a marked degree. It has resulted in giving to her far greater freedom in the choice of a vocation. She no longer is restricted as formerly to matrimony as her only means of support. New vocations have become accessible. According to Harriet Martineau, who visited America in 1840, there were but 7 employments at that time which were open to women. Industrial progress has widened this field until today out of a total of 579 occupations listed in the classified *Index of Occupations*, 15th Census, 1930, only 35 appear not to have been entered by women workers.

A developing personality and a growing self-consciousness on the part of woman as a product of education and her improved social status, has qualified her for larger self-reliant service to society, and economic conditions have afforded the opportunity. Thus the field for individual and independent effort, and the free investment of her labor-capital in the world's market has become open to her on terms more nearly equal with those of men.

Nor is the economic motive lacking. A woman may have worked as hard and produced as much under the old régime of domestic economy as she does today, but she received no pay. Her services were in a large measure gratuitous. They were part of her household duties which she owed to

¹ Cf. *Woman's Share in Primitive Culture*,

husband and family. Her compensation was her maintenance and the psychic income in the form of satisfactions derived from security and community approval. In the new forms of service open to her she enters as a free competitor. Wages are reckoned on the basis of capacity, with only occasional discrimination, and are paid to her. Without regard to her marital status she is treated as an individual in her own right. She is potentially free and independent.

This growth of economic opportunity has been accompanied by another far-reaching result, namely, the rise and extension of women's property acts. Prior to 1840 the legal status of women with respect to property rights was determined by the common law. At the time of marriage such property, real and personal, as the wife possessed, passed over to the ownership or, at least, control of her husband. Her legal existence as respected the administration of property was suspended or merged into that of her husband during coverture. He was charged with her support and as compensation was given complete control over her person and property. In two generations these conditions have radically been changed. The growth of industrial and civil liberty, aided by economic pressure, have resulted not only in changes of public sentiment but also in revisions of the law. "In 1839 Mississippi passed a law permitting the separate and absolute ownership by any married woman in her own name of any property acquired by her in any manner except from the husband after marriage."¹ Other states have followed suit until woman's emancipation in regard to property is now practically complete. Confirming this assertion Professor I. S. Russel says: "It is a general rule throughout the United States at the present time that a married woman may receive, receipt for, hold, manage, dispose of, lease, sell and convey, devise or bequeath her separate property,

¹ SMITH, A. H., *Married Woman's Statutes*, p. 8.

both real and personal, as if sole, without joining with or receiving the consent of her husband." "In the United States the law has reached that lofty elevation of ethical sentiment which enables it to announce that justice knows no distinction of sex. In this country apart from voting and holding office, woman labors under no legal disabilities of sex."¹ [This was written prior to the adoption of the Nineteenth Amendment.]

Another great obstacle to woman's freedom is rapidly disappearing. At the opening of the industrial era popular sentiment was opposed decidedly to female employment. It violated the traditions. The woman who sought remunerative labor was going out of her "sphere." She might drudge and slave within her own home until her physical strength was exhausted—that was her duty—but to invade the ranks of public labor was "unbecoming." It was considered to be dangerous to her health and morals. Gradually, however, increasing economic pressure and growing sanity on the subject are removing this prejudice. The recognition of her right as a human being to self-determination is overcoming the disabilities of sex. The field is open, the motive is supplied, and traditions concerning propriety are adjusting themselves to the new conditions. If present tendencies persist we may predict safely the coming of the time, and that not in the distant future, when reproach will rest, not upon "the women who work" as it does not now upon women who have entered the professions, but upon those who accept idle dependence upon any man, either husband or father, as their natural right.

Thus without human plan or purpose and without regard to consequences the opening of this wide range of industrial and professional opportunity, the growth of property rights which secure to women whether married or single the ownership of the product of their labor, and

¹ Introduction to BOYLE, G. J., *Women and the Law*, p. 14.

the diminution of prejudice against female employment automatically have accomplished the potential economic independence of women.

What now are some of the results of these altered conditions?

It is to be expected that the economic emancipation of one half of the human race from bondage to the other half will be followed by readjustments in other social relations. This is precisely what is happening at the present time within the domestic institution. In so far as marriages are still held together alone by the coercive marital authority of the husband on the ground of the economic dependence of the wife many of them are destined to disintegrate. A better basis for marriage must be found if stability is to be maintained.

The influence of the new economic status of woman upon the divorce rate quite readily is perceived. Marriage is no longer the only vocation open to her and for which she is qualified. She is not, therefore, forced into marriage as her only means of support, and later marriages among enlarging groups and lower birth rates generally reveal the influences of this fact. Moreover, if marriage proves to be a failure she does not face the alternative of endurance or destitution. The opportunities for independent support are ample and with diminishing opprobrium. Conscious of her legal rights and protected in the use of property or income, she is compelled no longer to accept dependence, or yield to the tyranny of a husband whose conduct is intolerable and a menace to her health and happiness. "The clinging vine has become a Rambler."

Thus the removal of restraints, due to enlarged economic opportunities, together with the growth of the new social consciousness of women, is ample reason for the increased resort to statutory grounds for the dissolution of the marriage tie. This condition probably is one of the chief reasons for the fact that approximately two-thirds of all

divorces in the United States are granted on the petition of wives.

It should be remarked, however, that this situation in the long run may be registered as an ethical gain, instead of a loss. Only those who hold marriage in extremely low esteem can regard economic necessity—a condition altogether too similar to that of prostitution—as a desirable basis. Perhaps it involves little if any social loss when bad marriages are dissolved. It is only when economic relations in marriage are adjusted and minister to higher considerations that they assume a moral character. To the extent to which women thus are able effectively to demand loftier concepts concerning the function of marriage, will a higher percentage of happy and successful marriages be attained, and consequently fewer divorces will be secured.

Obsolescence of the Patriarchal Form of Family Organization

One further problem of readjustment in marriage *mores* due to economic changes remains to be considered. It will have become apparent from the foregoing discussions that the ancient economic-patriarchal form of the family has fulfilled its function and is becoming obsolete. It had for one of its main roots the one-sided economic authority-dependence relationship which had existed for millenia. Masculine lordship is now being replaced by mutuality or mergence of wills in domestic affairs. The survival of patriarchalism today, with the attitudes which were its logical accompaniment, represents a hang-over from a vanishing age. Where husbands continue to assert their traditional authority and domineer over their wives because they provide the family support, they are likely to meet with increasing irritation and resistance. Tyranny of this sort is incompatible with the growing self-consciousness of large numbers of American women. The horizontal and interdependent relations within modern marriage

put a premium upon mutual respect and consideration. It is under these circumstances that compatibility and continued affection are more likely to persist, in which case also, marriage comes to represent a deliberate union and its chances of voluntary permanency, a far more desirable sort than that which results from coercion, materially are increased.

Now it by no means follows from the fact of woman's economic liberation, that she must contribute to the family income by actively pursuing an occupation or profession outside the home in order to secure the recognition of her independent status. We have used the word "potential" to describe the situation. The possibilities are always open to her, but it is quite possible and indeed desirable from many points of view and in a wide range of instances, for the wife to be able to contribute, and actually to contribute, her share to the family well-being by devoting herself to the successful management of her household, the bearing and rearing of children, and the facilitating of social amenities. But this must be a matter of choice, not of compulsion, and under conditions which in no way lower her self-respect through a feeling of servile dependency. In support of this contention we wish to point out that it is to the credit of any people that it has arrived at that state of economic advancement where its females may escape the burden of direct self-support. It is this which measures the distance between man and the lower animals, or better, between a backward and a progressive civilization. The spectacle of women following the plow, harvesting grain, or serving as "beasts of burden," in many foreign countries, does not fill us ordinarily with admiration. We should not pride ourselves overmuch, however, if we merely have substituted the factory for these more ancient types of employment, and, due to the same hard necessity, have compelled our women by the millions to engage in these new forms of industry.

It marks a distinct social gain that we have developed an economic system in which the male half of the population might without undue effort provide the support for the whole, and at the same time one in which women may support themselves if they choose or if it is to their advantage, and thus establish either their potential or their actual economic independence, but is not to our credit that they should be compelled to do so.

Most women, we believe, despite the large number who have forgone or who have forsaken marriage, temporarily at least, for employment or for careers, still regard a home and a family as the more desirable. Professor Cooley says: "There is no reason to doubt that a congenial marriage continues to be the almost universal feminine ideal."¹ The revolt against marriage on the part of many women is due in the main, not to the inherent undesirability of marriage but to the unhappy condition in which many wives find themselves in the present unsettled state of economic marriage *mores*.

If the time ever comes in the process of culture readaptation, when ideas and attitudes concerning the status of women become adjusted more adequately to the changed economic order it will then be possible for women to follow their natural inclinations more freely, because they will be able to regard marriage as a voluntary vocation which will not involve an inferiority complex, but on the contrary, a vocation which will offer the greatest chances of happiness and personality development without jeopardizing their freedom and without fear of being subjected to conditions which compromise their self-esteem.

We conclude, therefore, that economic changes bear a causal relation to the rise of the divorce rate. We have considered in this chapter what we regard as the chief reasons, although there are doubtless many others, why we may expect during the processes of culture adjustment

¹ *Social Organization*, p. 363.

within the institution of marriage, consequent upon these fundamental changes, to see the number of divorces increase. We have observed that these changes and the new conditions to which they have given rise create new causes of irritation and friction within the marriage relation which hitherto have not existed, but, notwithstanding these considerations, we believe that the chief factor in the problem is the circumstances which have made effective dormant causes which, but for the changed conditions, would never have come to light and hence would not have resulted in resort to the divorce court.

CHAPTER TWELVE

THE PROGRESS OF LIBERALISM

The Democratic Movement

IN THE PRECEDING CHAPTER WE DESCRIBED SOME OF THE readjustments of the institution of marriage as a phase of adaptive culture to basic changes in material culture. In this and in the succeeding chapter we consider similar processes of readaptation of marriage to changes in other elements of the adaptive culture itself.

One of the most significant phases of modern civilization is the democratic movement. Of course something more inclusive than political democracy is meant, although that is one of its most important aspects. "One is often impressed," says Professor C. H. Cooley, "with the thought that there ought to be some wider name for the modern movement than democracy, some name which should more distinctly suggest the enlargement and quickening of the general mind, of which the formal rule of the people is only one among many manifestations. The current of new life that is sweeping with augmenting force through the older structures of society, now carrying them away, now leaving them outwardly undisturbed, has no adequate name."¹

We have used the term "liberalism" as possessing a wider connotation, implying the larger freedom of the individual, with respect not only to the State, but to all other regulative and coercive influences in society as well. What we mean is that the social bonds of tradition in all spheres, which have held the individual rigidly within

¹ *Social Organization*, pp. 86-87.

their grip, are being relaxed and that the human spirit is being set free—free to experiment and to blunder, but in time indubitably to justify its freedom.

Professor Cooley continues: "The world is clearly democratizing; it is only a question of how fast the movement can take place, and what, under various conditions, it really involves. Democracy, instead of being a single and definite political type, proves to be merely a principle of breadth in organization . . . It involves a change in the character of social discipline not confined to politics, but as much at home in one sphere as another. With facility of communication as its mechanical basis, it proceeds inevitably to discuss and experiment with freer modes of action in religion, industry, education, philanthropy and the family. The law of survival of the fittest will prevail in regard to social institutions, as it has in the past, but the conditions of fitness have undergone a change the implications of which we can dimly foresee."¹

It has been asserted, probably with too great assurance, that prior to the opening of the present democratic era group solidarity has been maintained exclusively by the subordination of the individual to the will of the group. There have been notable historic exceptions. On the whole, however, the generalization seems to be valid. Personality development in the modern sense among the masses formerly did not exist. Neither in Tribalism, Feudalism, nor in the early imperial State were the economic or political conditions favorable to such development. Freedom of the individual was incompatible with group safety or success.

The liberal movement which has been the natural outgrowth of the revolutionary changes in the industrial and political organization of society in the last century and a half, was the product in the main of the increasing mobility of the individual under the new conditions.

¹ *Ibid.*, p. 120.

Freed both by enlarging economic and political opportunities for personal achievement, and at the same time, by the relaxing of rules and traditions which had fixed his status, man became a self-conscious personality.

Furthermore it has been the exercise progressively of this new-found liberty which has resulted in the discovery and in the establishment of the fact that freedom of private contract does not endanger constitutional authority, that individual liberty is compatible with social solidarity, and that it is possible to unite "stability and continuity with liberty and progress."

But this achievement in social liberation in its earlier stages was not the product of purposive human effort directed toward this end. It was rather the natural evolution of social organization through processes of integration and differentiation by which race maintenance and group continuity have been accomplished with diminishing cost to the individual. It became a self-conscious struggle only after the process was well under way and not until the individual had become emancipated sufficiently to perceive and to demand still greater advantages.

Historically, the beginning of this purposive drive with its effective demand for greater freedom of the intellect, for more liberty of conscience, for enlarged individual initiative, for increased enlightenment for the masses, for larger liberty of free speech, free press, and free assembly, familiarly is assigned to the period of the Renaissance and the Protestant Reformation. Regardless of the exact time and place of its origin it could gain no real headway until after the Industrial Revolution had remodelled the economic structure of society directly in this interest, nor until political institutions had been democratized to the extent of guaranteeing the civil rights and privileges of the individual in law.

That the movement in the direction of liberalism has been increasingly rapid in America since the Civil War

scarcely demands demonstration. The economic transformations favorable to individual self-realization have been described in the preceding chapter. Beginning with the emancipation of the Negro as an incident of the war itself the process has gone on, affecting whole groups and classes in a social amelioration which has been none the less real and rapid because its methods have been less spectacular. The successful amalgamation of a complexity of ethnic elements into our population has increased our plasticity and progressiveness without endangering our political and social cohesion. The Nineteenth Amendment to the Constitution completed adult participation in governmental affairs by extending the suffrage to women. General enlightenment and scientific attainment have maintained even pace with our material prosperity thus strengthening the foundations of our national life. Moreover the growth of science in its application to the social realm has equaled its triumphs in many other fields, while social reform, in its newer concepts of social service and public welfare has become progressively a function of government.

There is not the shadow of a doubt concerning the ultimate value of this liberal movement for the future well-being of mankind. The rationally perceived goal of social progress is the perfection of human personality, and any trend in that direction is fundamentally moral and worthy to be promoted. Any rapid culture change, however, involves, unavoidably, it seems, maladjustments of a disturbing character. Smooth-working democracy requires new, or at least greatly modified, concepts of personal responsibility which so far have not successfully been developed. We have pointed out more than once that the break down of a system of external controls is followed by a period of confusion until adequate internal controls are devised to take its place. Our present conspicuous irresponsibility and disrespect for law is due, not to the

incidence of the Eighteenth Amendment and the Volstead Act, as so many recently have claimed, but rather to the more general and basic fact of unadjusted personality under a new and unexperienced freedom from conventional restraints—a condition greatly augmented since the World War. We simply have not learned to use our freedom wisely. It is ultra-individualism run riot which raises the much debated question whether men can safely be trusted with their own self-direction and self-government.

Furthermore, it is only logical to find that the trial-and-success method of individual and of institutional readjustment necessitated by changing conditions has been regarded as dangerous by all conservative individuals and groups and that the social costs, even of successful readaptations, too often have been viewed as evidences of disorganization.

What we are sure of is that the movement on the whole is advantageous, and fortunately is irreversible in its trend and therefore cannot be thwarted or obstructed permanently by the forces of obscurantism. The way of continued improvement lies, therefore, not in resistance but in a better understanding of the nature of the changes which are taking place and in a more constructive reconditioning of our social control methods in harmony with the new situation. In this direction alone lies progress.

We turn now to the consideration of some of the chief implications for our study of this liberal movement which was implicit in, and which emerged from, the fundamental changes in economic and political structures of modern civilization. That it was destined to effect corresponding changes in other social institutions including marriage is confidently assumed, and such indeed have been its results. It is clear that the religious-proprietary family and the *marriage de convenance* were not compatible with the new régime. We have seen how marriage through the changes wrought by the Protestant Reformation, ceased to be

regarded as a religious sacrament and became a civil contract.¹ We have noted also the effects of the Industrial Revolution upon the domestic institution.² We have now to observe that under the sway of liberalistic tendencies the old coercive basis of marriage has been undermined and a new basis is in the process of construction which will have greater consistency with the growing demands of personality.

It is foreign to our purpose to treat exhaustively the history of this movement. It will be sufficient to discuss its main aspects which are characteristic of our American situation.

Liberalism and the American Spirit

The United States beyond any other nation, with the possible exception of Great Britain, has achieved distinction through the high degree of civil liberty and personal freedom guaranteed by the Constitution. A typical example of modern progress is here afforded. The intensification of the feeling of nationality and the social self-consciousness of the nation as a whole has been accompanied by an increasing realization of personality on the part of the citizen. As a result of the large latitude thus enjoyed a great flexibility of the social organism has been developed. Voluntary associations for the promotion of the political, social, and economic welfare constitute relatively a larger part of our collective activities than of that of any other people. Based upon a frank utilitarianism, social forms and institutions, of whatever sort, do not exist for themselves, but for the benefit of those who create them. A critical and scientific attitude is therefore maintained toward them and they are held to a strict accountability for the performance of their proper functions. Free from many of the traditions concerning the inherent sacredness of insti-

¹ Cf. *supra*, Chap. IV.

² Cf. *supra*, Chap. XI.

tutions which appertain to a monarchical or despotic form of government, Americans are less fearful of social disaster in making whatever changes are demanded by an expanding social life. Change for us, except for a few ultraconservatives, does not signify social disintegration, but is rather viewed as the condition of a sustained progress.

The characteristic attitude of our people toward social institutions is similar to that set forth in the Declaration of Independence concerning government. Institutions exist to promote "life, liberty, and the pursuit of happiness." When for any reason they "become destructive of these ends, it is the right of the people to alter or to abolish them and to organize new ones laying their foundations on such principles and organizing their powers in such form as to them shall seem most likely to effect their welfare and happiness."¹

This spirit of liberalism has had far-reaching results. Objectively, it has made for efficiency throughout our whole social organization and has prevented fixity of type. Subjectively, it has been productive of the open mind. As a total result we have arrived at a state of complacency in regard to the perpetuity of our free institutions which no alarmist propaganda is able seriously to disturb. Prophecies of dire political and social disintegration are not able to stampede any considerable number of the people at any time. Since sufficient time has not elapsed to afford an adequate test of many of our institutions, confidence in their stability is less a product of experience than of conviction. It is the result of our faith in the efficacy of social evolution ultimately to accomplish our highest social good.

In this general attitude of mind we discover a basic reason for the phenomenon we are seeking to explain. We observe marriage from the same point of view from which all other social institutions are regarded. It enjoys

¹ Slightly paraphrased.

no special protection or taboo which shields it from the test of utilitarianism. It, with all others, must serve the end of its existence or undergo transformation. As other higher ethical considerations are added to the function of race maintenance the test of efficiency becomes of greater importance. Failure becomes an increasing calamity. Since it is not compatible with American ideals of justice and freedom that the institution should be held more sacred than the individual, the remedy is to be found in the transformation of the former rather than in the sacrifice of the latter.

When, therefore, changed conditions began to exert an increasing pressure upon the family and to compel a new adjustment because of the inadequacy of the older forms, there was not encountered the stolid opposition based upon tradition to be found among older and more staid commonwealths. The process of social evolution had fewer obstacles to encounter and hence the rapidity of its advance.

We have here, then, one of the influential psychological elements which helps to explain why the rate of divorce, which is rising all over the civilized world, is more rapid in the United States than in any other country.

American Individualism

We have pointed out already the significance of this spirit of individual self-realization in the movements of modern civilization. Since the discovery of the individual in the Renaissance of the fifteenth century steady progress has been made in the achievement of intellectual, political, and religious individualism. The free exercise of personal rights and initiative within reasonable limits has become the established and inalienable prerogative of free persons, over widening areas, and it has proved to be beneficial alike to the citizen and to the State. The investment of

personality is an unquestioned virtue. It has yielded large returns in every sphere of activity.

A further word, however, concerning the specific brand of individualism in America and the specific conditions under which it has developed, is desirable. The unrivaled economic advantages in the New World were exceedingly attractive to enterprising persons on the other side of the Atlantic. Here the opportunity was afforded to every man to improve his condition according to the measure of his own capacity, economy, and thrift. He was his own enterpriser. In addition, religious intolerance in the Old World caused those who were subject to persecution to look upon the New World as "an asylum for the oppressed" where every man might "worship God according to the dictates of his own conscience." These and other agencies were instrumental in selecting for our first colonists and early settlers a race of energetic, adventurous, and liberty-loving folk, among whom the doctrine of individualism was congenial and a natural consequence.

If inheritance of traditions and the influence of the mother country, in the case of our English immigrants, prevented the full realization of the dreams of individual liberty during the early Colonial period, the second selective process met with better success. Our true and untrammelled individualism grew up in that race of hardy pioneers, the most virile and daring representatives of a sturdy people, who left New England and the other colonies for the newer Middle West and who wrested the wilderness from its native savage possessors, often by ruthless methods, and opened it to advancing civilization. They were scattered, isolated, dependent upon their own resources. Each family was a complete, self-sustaining economic unit.

Thus the independence and self-reliance characteristic of the pioneer, which manifests itself in the peculiar phenomenon of the isolated farmhouse in all the rural regions of the United States, is as clearly marked in its

influence upon our social and political institutions. It has been a dominant characteristic of our whole national history. The Revolutionary revolt against Great Britain arose chiefly out of conditions regarded as destructive of the personal rights and of the freedom of the individual. Furthermore, the obstacles encountered in the formation of the Union and the difficulties involved in its maintenance are mainly but other aspects of the spirit of individualism characteristic of the American people.

Viewed with reference to its effects upon our social psychology, this mental attitude leads to the complaisant disregard of forms and conventionalities whenever they appear to stand in the way of personality development. It is not likely that this spirit of individual liberty in the near future, at least, will be hampered by traditions or by institutionalism.

Naturally enough we run certain risks. It is possible that this liberty may run to license, and doubtless in numerous instances it has. Professor A. W. Calhoun says: "'This democratic spirit of self-determination' seeks to loosen bonds that no longer command the assent of the will. Men and women live increasingly for pleasure; the age of surplus has eliminated asceticism; people believe in the pursuit of happiness and take little stock in renunciation."¹ But in time there are likely to develop the inevitable social reactions against the perversion of individualism which will prove to be its self-corrective. Moreover, there are visible already the signs of a growing limitation imposed by the conscious demands of the social well-being.

As touching the rate of divorce, the influence of individualism results in a strong tendency to resort to marriage relations which promote individual welfare. When the union proves unfavorable in this regard there is destined to be facile and free recourse to the divorce courts. Divorce laws may remain unchanged; they may become even more

¹ *Social History of the American Family*, Vol. III, pp. 269-270.

stringent; legal sanctions may be backed-up by specific group prejudices, but the divorce rate from this cause will tend to rise until conditions in marriage become more favorable to this end. That this cause increasingly has been operative during the period of our study is due to the fact that it could produce its effects only under the changed economic, social, and religious conditions which have removed the hindrances formerly obstructing its operation.

The Popularization of Law

One of the interesting outgrowths of the democratic movement has been the popularization of law. "During the Middle Ages," says Professor Willcox, "law was a personal privilege. For centuries legal forms and procedures continued so intricate and expensive that the benefits of the law accrued only to the wise or wealthy. Along with extension of the suffrage in modern times has come an almost equal extension of legal privileges. Whole classes have been admitted to court that were formerly excluded by the efficient practical prohibitions of ignorance and poverty. The change in the position of the Negro, effected by his emancipation, is but a single striking illustration of what has been going on constantly as the result on the one hand, of laws simplifying procedure and diminishing the expense of legislation, and, on the other, of the better education of the community in matters of law . . . Thus the law has become a weapon of offense or defense for a very much larger part of the population than could use it even so recently as fifty years ago."¹

Now we do not hesitate to assert that the increasing accessibility and utilization of law for the safeguarding of individual rights, for the elimination of social inequalities, as an aid in the better adjustment of human relations, and as a means of more effectively harmonizing the interests

¹ *The Divorce Problem, a Study in Statistics*, pp. 63-64.

of the individual with those of the group, is a social gain of no mean proportions, and the greater the number to whom the law can be made to render such service the greater is the good. It is only when the law becomes, as it often does, the instrument by which ulterior purposes are accomplished on the part of irresponsible or antisocial individuals that the law is traduced and its exploitation becomes the perversion of a social good. This, however, is but another item among the costs we must assume in the interest of social advance. We cannot deny to all the benefits of law in order to prevent abuses by some. The only solution for the difficulty is to extend these benefits to everyone who needs them and at the same time to devise means to prevent the misuse of law by those who abuse their privileges.

It is difficult to find in any other phase of law a more striking or clear-cut trend in the direction of its popularization than in matters pertaining to divorce. As is well known, we inherited from England not only many of our traditional attitudes toward divorce but much of our legal procedure. For approximately two hundred years prior to 1857 divorces in England could be obtained only by special Act of Parliament. But, says Professor Howard, "the relief granted by Parliament was effectively placed beyond the reach of all save the plutocracy. The triple cost of the law action, the ecclesiastical decree, and the legislative proceedings, was enormous. How utterly the luxury of divorce was placed beyond the wildest dreams of the poor man appears when one understands that it could be obtained only by the expenditure of a fortune sometimes amounting to thousands of pounds."¹

It was not until the Civil Marriage and Divorce Law of 1857 that the jurisdiction of divorce was reposed in a new "Court for Divorce and Matrimonial Causes." Since 1873 this court has been superseded by the "Probate,

¹ *A History of Matrimonial Institutions*, Vol. II, pp. 107-108.

Divorce and Admiralty Division of the High Court of Justice," where jurisdiction now rests.¹

Among the American Colonies few divorces were granted prior to the Revolution. Chancellor Kent says: "During the period of our colonial government, for more than one hundred years preceding the Revolution no divorce took place in the Colony of New York; and for many years after New York became an independent state, there was not any lawful mode of dissolving a marriage in the lifetime of the parties, but by a special act of the legislature."² Professor Howard makes a similar assertion in reference to the Southern Colonies.³ Where divorces were granted, the English procedure, in general, was followed, jurisdiction resting in legislative bodies. Very early, however, more liberal tendencies began to manifest themselves, notably in Massachusetts, 1660, and Connecticut, 1667, where jurisdiction was reposed in the "Court of Assistants."⁴ These examples were not followed extensively although several other colonies made similar provisions before the end of the Colonial period.

"Through their silence on the subject" according to Professor Howard, "nearly all the first state constitutions left the power of granting divorces in the hands of the legislative bodies."⁵ And Professor Calhoun adds: "After Independence, divorce by private statute continued for more than half a century in most states. Gradually, however, general statutes began to emerge and jurisdiction began to pass to the courts. Georgia, Mississippi, and Alabama were the first to abolish legislative divorces, though the approval of a two-thirds majority was still required after the court had made its decree. In other states,

¹ Cf. Howard, *ibid.*, Vol. II, pp. 109-110.

² Commentaries II, pp. 97-98. Quoted by HOWARD, *op. cit.*, Vol. II, p. 383, also by CALHOUN, *op. cit.*, Vol. I, p. 183.

³ *Op. cit.*, Vol. II, p. 367.

⁴ Cf. HOWARD, *ibid.*, Vol. II, pp. 331 and 354.

⁵ *Ibid.*, Vol. III, p. 4.

legislative divorces were used on occasion till about the middle of the century when in the majority of states the method was abolished."¹ In 1886 the Federal Congress passed a law forbidding legislative divorce in any territories of the United States. While this law, of course, could not apply to the States, it represented definitely public opinion on the subject.

Without tracing in detail the history of this movement it is sufficient to state that at the present time jurisdiction in the granting of divorces extends to courts of record in every county or judicial district throughout the United States, and with diminishing costs.

Professor Willcox explains, in a graphic manner, the effects of this increasing accessibility of the law upon the divorce trend. He says:

"Imagine society as a huge pyramid in which the position of each individual is determined by his knowledge and wealth. Imagine a horizontal plane intersecting the pyramid to represent the divorce law of the community, and all the persons above the plane to possess so much knowledge and money that divorce is to them a theoretical possibility while to those below it is not. If the plane be motionless the rate of increase of divorce may be found; but if it be gradually sinking toward the base of the pyramid, and making divorce a practical possibility to an increasing proportion of the whole population, this change must affect the calculation. Such a descent of the divorce plane has been in progress in this country, apparently, for the past twenty years. While it does not invalidate the previous conclusions, it does influence them, perhaps materially, and certainly renders untrustworthy any estimate for the future."²

With the statistics of the further period of more than forty years before us³ we are able to observe the striking

¹ *Op. cit.*, Vol. II, p. 44.

² *Op. cit.*, p. 64.

³ *Cf. supra*, Chap. V.

way in which the figure of the pyramid describes the phenomenon. The plane of divorce possibilities has been sinking toward the base of the pyramid for this additional period, and as a matter of fact the ratio of divorces at the first and later periods tends to approximate the ratio of the areas of the planes calculated at these same periods.

The significance of the increasing popularization of law for our theory of interpretation is not that it would be necessarily the immediate cause of a single divorce, but that, so far as it concerns all those persons who are living in intolerable marital relations, or in those instances where these relations completely have been broken off, but who, on account of ignorance or poverty, could have no recourse to the divorce court, the placing of the law within their knowledge and reach would be the occasion of divorce in numerous instances. Existing conditions would in no way be affected, either for better or for worse; they simply would be revealed.

Until the time, therefore, when the plane in our illustration reaches the base of the pyramid, and it seems now to be approaching it, and all alike have access to the courts, the increasing opportunity will continue to be a factor in producing an abnormal increase in the number of divorces.

Increase in Popular Learning

Another potent factor in the movement for social liberation has been the spread of popular learning. Education has ceased to be the peculiar distinction of the privileged classes; it has become the possession of the masses.

It is difficult to express statistically the degree of education enjoyed by a social population. At present no general or direct methods are employed in measuring this phenomenon. We are left, therefore, to the use of indirect methods.

The negative aspect revealed in the decrease of illiteracy is perhaps the best accessible index. In the United States, uniform statistics of illiteracy have been published by the

Bureau of the Census since 1870. The percentage of illiteracy in the total population ten years of age and over by decades is as follows: 1870, 20; 1880, 17; 1890, 13.3; 1900, 10.7; 1910, 7.7; 1920, 6. The total number of illiterate persons ten years of age and over in 1870 was 5,658,144 while in 1920 it was 4,931,905 notwithstanding the fact that the population ten years of age and over grew from 28,228,945 in 1870 to 82,739,315 in 1920. The remarkable decrease in illiteracy is the more striking in view of this great increase of population during the same period and in spite of the fact that much of this illiteracy is due to the invasion of many millions of foreign immigrants among whom the degree of illiteracy is greatly in excess of that in the native population.

An index of intellectual culture, as contrasted with the mere question of literacy, is the growth in the number of educational institutions which are required to carry education beyond the elementary instruction provided by the primary schools. The increase in this class of institutions in the United States in recent decades has been phenomenal. The secondary schools have increased from a scattered few in some of the larger cities in 1870 to 21,700 in 1926.

In 1800 there were 24 colleges and universities in the United States.¹ In 1870 there were 369 while in 1930 there were 579. Similar increase is shown in junior colleges and in professional and allied schools. The growth of public circulating libraries, evening schools, correspondence schools, Chautauqua assemblies, public forums, university extension courses, literary study clubs and circles, radio lectures and other educational features, and the like, indicates the tendencies toward the acquisition of knowledge and of interest in adult education on the part of large masses of people outside the regular instruction in schools, colleges, and universities. The ever increasing volume of periodical literature together with the enormous output

¹ SHALER, N., *The United States of America*, p. 315.

of the daily press is placing still more general information in the possession of the American people.

The function of popular education in the creation and in the defense of intellectual freedom, both individual and social, scarcely can be overestimated. Here also, as elsewhere, "knowledge is power." The rise of educational culture is accompanied by increased self-assurance and self-assertion. It results in emancipation from ignorance and from superstition. The growth of scientific knowledge with its respect for orderly sequences in nature and in events, not only is productive of economic efficiency, prudence, and providence, but it develops foresight and self-direction in every other aspect of social behavior. Few articles of our democratic faith, since the days of Thomas Jefferson, have acquired more universal credence than that of the desirability of popular enlightenment.

In a population thus intellectually equipped, all manner of obstructions which hinder freedom and progress, whether due to the tyranny of men or to the domination of traditions, become increasingly obnoxious. This results, not because conditions are worse, but because with higher degrees of enlightenment they are perceived more clearly. Much of the social unrest of our time is due not to more unfavorable economic, political, and other social conditions, for these conditions, by and large, have greatly been improved, but to the greater degree of knowledge enjoyed by the masses which makes surviving injustice and inequality of opportunity harder to bear with resignation. Wrongs are felt more keenly, and as a consequence rights are demanded more persistently. Thus as long as evils exist in the body politic, the growth of knowledge may become a disturbing element while at the same time it constitutes a most efficient means of advancing the public good.

What now are the influences of this factor upon divorce? Let us imagine, since only by this process can we isolate

in thought what cannot be done in reality, that we have a situation in which every other condition in marriage remains, for the time being, constant. Given then a rapid increase in education and intellectual refinement and the influence of this factor very soon would appear. In marriage, as in every other human relation wrongs do exist. Previously they may not have been sufficient to disrupt the marriage tie; they simply may have been endured with fortitude. With the keener sensitivity which more cultivated natures implies the difficulties would of necessity become a greater burden, and, if too serious to be righted, they would become in time insufferable.

That this effect actually is procured, though in conjunction with other factors, logically is apparent, and hardly can be questioned, even if by present available techniques it cannot accurately be measured. Nor does it represent, it would seem, an unwholesome condition notwithstanding the fact that its immediate effects appear to be detrimental. Its ultimate result doubtless will be a definite contribution to a higher standard of marital happiness and to an improved family life.

Improved Social Status of Women

One of the most conspicuous joint products of the several factors which we have been considering is the improved social status of women. Their position of inferiority, due to economic dependence, to medieval marriage *mores*, to restricted activities and outlook, to lack of intellectual training, and other like causes, could not remain unaffected in the general liberalizing movement. The increase in individual and civil liberty, the growing recognition of equal rights afforded by the accessibility of the law, and the general improvement in popular education all have contributed in the case of women to afford them occasion for demanding their just share of human rights and privileges. Oppression and dependence were destined to give

way before the drive of social forces which has been working for centuries but which only now is finding adequate release. More and more are legal recognition and protection afforded women on an equality with men. Ascetic ideals have so far been abrogated that marriage and motherhood are becoming matters of choice and consent. Improved economic and social conditions have lightened the burden of domestic responsibilities and opened to them possibilities of careers for which they may be endowed by nature or prepared by training either within or without marriage. It is not surprising, therefore, that they should have arrived at a somewhat greater consciousness of their own personality; that they should have become more sensitive to the existence of deprivations which before had not been realized.

There is an obvious culture lag between these changed conditions and the dual problem of the necessary reconstitution of the *mores* on the one hand and the readjustment of women to the new situation on the other. This has given rise to the aggressive "woman's movement" familiarly known as "feminism," and if this movement did not result in some extreme behavior it would be unusual. Professor Willystine Goodsell says: "The battle to overcome hampering conditions and win through to a larger life is not recruited from the weak, the supine and the 'ladylike.' It is not surprising that the 'woman movement' has developed some vigorous personalities, engrossed with the problems of women, and inclined to carry a chip on their shoulders. Such characters are often found among men who espouse causes—personal or social. But society finds these qualities peculiarly exasperating in a woman, whose historic role has ever been meek acceptance of her lot. Self-consciousness and self-assertiveness are not likable characteristics in any individual, and those women who reveal them become the special mark of satire, ridicule and dislike. Yet when viewed in relation to the situation which has produced

them, these traits must fairly be admitted to be signs of striving to achieve a more satisfying life. When the end that evoked them has been achieved, they will tend, as with men, to weaken or disappear . . .

"If women, in the midst of the struggle of their lives to find a way of harmonizing their love needs with their needs as individuals, become 'assertive and angular' and 'get in everybody's way,' that is only to be expected. In the course of time they will come to closer grips with their problem, will think it through and find satisfactory ways of meeting it . . . In the course of time, feminism, which as Elizabeth Breuer truly suggests, *is not an end in itself, but an attitude toward life*, will have surmounted the chief obstacles in the path of women and will thereupon cast off its assertiveness and solemn self-consciousness like a garment. But the end is not yet."¹

The significance of the effects thus produced upon the divorce rate is as perspicuous as it is important. The freedom of woman—actual or potential—is the deathblow to the survival of the patriarchal or any other coercive system of marriage. Although many wives still regard it as a sacred obligation to endure if need be a species of martyrdom out of reverence for marriage as a sacred institution, their number is diminishing. Increasingly women are coming keenly to feel, if not clearly to see, that a course of conduct cannot be destructive of personality and at the same time in accordance with the highest morality. Hence the growing tendency to revolt.

Under the old régime, however, the privilege of divorce was chiefly the prerogative of the husband. The wife had little redress for her wrongs. Under modern conditions the disabilities of sex have so far been removed that women have as free access as men to the divorce courts. Neither the right nor the opportunity is, then, denied to those women

¹ *Problems of the Family*, pp. 270-271. Cf. also BREUER, ELIZABETH, "Feminism's Awkward Age," in *Harper's Magazine*, April, 1925, p. 545.

whose marriage relations are unhappy, to free themselves from tyranny or abuse, and with the motive intensified by a clearer perception of the wrongs involved we might reasonably expect that an increase of divorces on the application of women would result, and the assumption corresponds, as we know, with the facts.

This does not at all indicate that marital conditions are worse now than they were sixty years ago—they may be or they may not be. What it does indicate is that with the acquisition of new rights and immunities, women are choosing to exercise them in order to obtain relief from abuses to which formerly they were indifferent or from which formerly there was no way of escape, and the divorce rate to that extent becomes an index of the growing freedom, intelligence, and morality of American women.

Diminishing Primary Group Controls

Another aspect of social change which is affecting the individual in our modern complex civilization is the relaxing of primary group controls. We are indebted to Professor Cooley for coining the phrase "the primary group" and for defining its scope and influence. He says: "By primary groups I mean those characterized by intimate face-to-face association and cooperation. They are primary in several senses, but chiefly in that they are fundamental in forming the social nature and ideals of the individual. The result of individual association, psychologically, is a certain fusion of individualities in a common whole, so that one's very self, for many purposes at least, is the common life and purpose of the group."¹

In the simpler organization of the past, under the rural or small community pattern, and before the rapid urbanizing process had set in, the local community or face-to-face group played a dominating rôle in molding the individual to type. The affairs of each individual were known inti-

¹ *Op. cit.*, p. 23.

mately by all other members and deviation from the *mores* of the group were regarded with keen disapproval. Under such conditions group conforming pressure is at its maximum and the individual is bound about by restrictions which hamper his freedom and initiative. This may not be a conscious deprivation since the views and attitudes of the individual largely are group-made, but if the group has a limited mental horizon or if it is dominated by custom and tradition there is little chance of personality development outside this narrow range.

Note, now, what has happened. The tendency created by the industrialization of society is to disintegrate communities and to reorganize social control on a broader, more indirect and more impersonal basis. We quote again from Professor Cooley: "In our own life the intimacy of the neighborhood has been broken up by the growth of an intricate mesh of wider contacts which leaves us strangers to people who live in the same house. And even in the country the same principle is at work, though less obviously, diminishing our economic and spiritual community with our neighbors. How far this change is a healthy development, and how far a disease, is perhaps still uncertain."¹

There is little doubt as to the healthfulness of changes, the outcome of which is to increase the facilities for expanding life, and for the throwing off of restraints which confine personality within bounds which stunt its growth. It is a disease only when freedom is undisciplined by the larger interests of the social well-being and when it recklessly infringes the rights of others. Since we cannot reverse the processes of social change and return to the old order we shall have to exercise patience and at the same time employ whatever means are at our disposal, or which our ingenuity may be able to invent, to facilitate a better readjustment to the new situation.

Commenting on these changes as they affect divorce Professor Calhoun says: "In the old rural society, custom

¹ *Ibid.*, p. 26.

reigned. It was custom to live with one's wife; it was custom for the wife to be submissive and for the husband's authority to overrule incompatibility. Moreover, when people usually spent their entire lives at the place of their birth, the sentiment of their neighbors acted with telling force. A man that formally broke up his family or a woman that formally deserted her husband had to take into account the antagonism of the neighborhood and the bitterness of its frown. City life is a great solvent of custom; neighbors do not know each other or if they do, they are tolerant, or the problem may be solved by moving. Hence one is free to follow fancy in matters of divorce."¹

In instances where this "fancy" involves the escape from intolerable marital relations the diminishing of primary group control and the consequent rise in the divorce rate in so far as it is due to this factor can hardly be regarded as a misfortune. At any rate until better adjustments within marriage reduce the number of such exigencies the present trend probably will continue.

In this review of some of the chief products of social transformations due to the progress of liberalism, our one purpose has been clearly to point out some seemingly inevitable effects upon the divorce trend. The conditions thus revealed do not force us necessarily to the conclusion that marital conditions in America are increasingly bad. They do not prove that they are not. We have tried simply, so far as it has been possible, to isolate these factors for purposes of analysis, and to disclose the fact that there is ample ground, in part at least, to account for the continuous rise of the divorce rate during the continuance of their active operation in the sphere of individual and social freedom. This can be alarming only to reactionaries who hold that any remedy for unhappy marriage is worse than the disease.

¹ *Op. cit.*, Vol. III, pp. 266-267.

CHAPTER THIRTEEN

REVISED ETHICAL AND RELIGIOUS VIEWS

Religious Conservatism

THROUGHOUT THE COURSE OF HISTORY, RELIGION HAS BEEN one of the most potent conditioning factors in the control of human behavior. On the whole it has been a conservative influence and has made for social continuity and solidarity. Traditional beliefs and immemorial customs which have become invested with religious sanctity survive with great tenacity and retard or counterbalance the effect of other causes which tend to produce changes in the social order. Thus habits, ideas, or institutions which have enjoyed the protection of religious taboos have been shielded from the impact of disturbing influences. If, at times, because of its formalizing tendencies, religion has stood in the way of progress it doubtless has prevented many disastrous experiments in social policy.

It would appear, therefore, that while economic development and the progress of liberalism have been increasing the probabilities of divorce, religion has acted as a retarding agency and has set effective checks upon the free operation of these tendencies.

Among loyal adherents of the Roman Catholic faith the power of the Church has been sufficient practically to overbalance all other influences and divorces are relatively rare as compared with those among non-Catholics. Where Catholic influence in the population is strong the divorce rate is correspondingly low. While statistical demonstration of the exact extent of this influence is not readily obtainable the fact itself seems to be attested by such figures

as are available.¹ This is due to the doctrine of the indissolubility of marriage because of its alleged sacramental character which is held and enforced by the Church. This effect, however, is somewhat more apparent than real. A considerable portion of this difference would disappear if legal separations which are frequent, and which are sanctioned by the Church, were considered.

Among Protestants undoubtedly it is true also that the emphasis placed by the clergy upon the "sacred character" of marriage has been sufficient to act extensively as a deterrent to divorce, and for the first time we now have a serious effort to secure a statistical measurement of this control.

During the year 1929 a special commission of the Protestant Episcopal Church, appointed to study the whole problem of divorce, made an extensive investigation of the frequency of divorce among church members or regular church attendants. A questionnaire was sent to about eight hundred clergymen in charge of large and influential parishes of the Protestant Episcopal, Presbyterian, Methodist Episcopal, Congregational and Baptist churches. The ministers were asked, among other things, to report the number of divorces which they could recall in each parish over which they had presided in which both husband and wife were regular church attendants.

The significant findings of the investigation are presented in the table shown on page 314.

Commenting upon these figures the commission says: "Making every allowance for inaccuracies it would appear that the problem of divorce is not especially serious in those cases where both husband and wife are regular attendants of our Churches, but that it is confined to relatively few of them. To state it differently, the great amount of divorce attracting attention in the United States today would not appear to be especially serious so

¹ Cf. WILLCOX, *The Divorce Problem, A Study in Statistics*, p. 29.

TABLE XXVIII.—DIVORCES IN PROTESTANT CHURCH PARISHES¹

Denominations	Bap- tist	Congre- gational	Epis- co- palian	Metho- dist Epis- copal	Pres- by- terian
Number of parishes reported	682	520	787	1,062	694
Total number of divorces recalled	141	163	346	190	178
Number and percentage of parishes in which no divorces were recalled . .	525 84.3	431 82.8	612 77.7	937 88.2	578 83.0
Number and percentage of parishes in which one divorce was recalled	52 7.6	58 11.1	78 10.0	61 5.7	67 9.0

¹ *Report to the General Convention of the Protestant Episcopal Church of the Joint Commission to Study the Whole Problem of Divorce—Its Conditions and Causes*, pp. 36-45.

far as church-going people are concerned, but rather a problem among those who are in no sense vitally connected with our Churches . . . The people to whom religion and church-going appeal are the kind who do not get divorces."¹

Even after making due allowance for errors the figures seem to bear out these assertions. The average number of members per parish as reported by clergymen now in charge in the five communions is 696. Taking this figure as the average for the total number of parishes reported, 3,745, the total number of parishioners would be 2,606,520 among whom 1,018 divorces are reported, or a rate of .39 per thousand, as compared with the rate of 1.66 per thousand of the total population in the United States for the year 1929. And when it is observed that the number of divorces reported is not for a single year but for the entire duration of the various pastorates covering several, sometimes many, years the contrast is indeed striking.

The report of course cannot be taken as conclusive of the effect of the Protestant Churches in preventing divorces

¹ *Ibid.*, pp. 36-37

in view of the fact that persons who become involved in domestic difficulties and knowing of the ecclesiastical attitude toward divorce very likely would cease to remain members of the Church or would refrain from regular church attendance, but even if this were the case the restraining influence of the Church would seem to be an important factor—much larger than generally is supposed.

It seems fair to assume from the facts thus presented that the pressures exerted upon marriage due to the changes set forth in the two chapters preceding, might have manifested themselves earlier and that the divorce rate might have risen even more rapidly but for the conservative influences exerted by religion as organized in the Churches.

Passing of the Dogmatic Age

It is necessary now that we should point out some radical and consequential changes taking place in the sphere of religion and morals, which at the present time, and for some time past, are, and have been, tending to modify the restraints formerly imposed by these agencies and which are modifying the attitudes of increasing numbers of persons both within and without the Churches.

There is a widely accepted view that religious restraints, on the whole, as they affect divorce, have become more powerful. This conclusion is supported by the fact that ecclesiastical legislation among the Protestant Churches within the last few decades has grown more stringent,¹ and that the increasing hostility of the clergy toward divorce is revealed in the frequent action in ministerial alliances in the adoption of resolutions against it and in their agreements to refrain from solemnizing marriages of divorcees. It was shown also in a previous chapter that the Inter-Church Council on Marriage and Divorce sought to unify the action of the Churches and to secure a greater

¹ Cf. *supra*, Chap. IX.

degree of comity in regard to the enforcement of the usages and laws of the several communions concerning the remarriage of divorced persons.¹ Ostensibly, therefore, it seems that the restraints of the Protestant Churches increase in proportion as the general conditions of divorce become more favorable. But the stubborn fact remains that in spite of these increased activities the divorce rate continues to rise with undiminished rapidity.

It does not augur well for the future well-being of society to concede the growing impotency of moral restraints or to assign the reason for the divorce trend to the "progress of unbelief." Nor do we believe that this offers any more rational interpretation of the phenomenon than that which proposes increasing human perversity in general as the explanation of the rise of the divorce rate. The explanation evidently lies deeper and involves a different character of interpretation.

A more careful scrutiny of the present religious situation, we believe, will show that the real forces which actually are affecting present results are not those which manifest themselves in ecclesiastical legislation or in reactionary clerical resolutions which represent the traditionally conservative influences in the Church, but are those which reside in the nature of our modern social and intellectual life, and which although not so spectacular and not sufficiently ostensible to be taken into account by the superficial observer, are, nevertheless, producing the changed religious and moral ideals and attitudes of the present.

This radical and fundamental change in the virile religious thinking of our age is due to causes both mental and material. While some writers have designated 1543 as the birth year of modern science—the year in which Copernicus published his work on the revolutions of the heavenly bodies and Vesalius his discoveries in human

¹ Cf. *supra*, Chap. IX, pp. 241-243.

anatomy,¹ the modern intellectual era more accurately may be said to date from the year 1859 when Charles Darwin published his *Origin of Species*. Since that time the whole intellectual process has been transformed. The theory of evolution has given us a new geology and it is giving us also a new theology. It has caused the shifting from the deductive to the inductive method in the search for truth in every sphere of inquiry and has transformed the whole process of literary and scientific studies. It is impossible also, as we have seen, for a civilization which has experienced such basic changes in its material culture to escape similar effects upon its concepts of religious thought and modes of expression.

What are these results? For two generations we have been witnessing the passing of the dogmatic age in theology. The Church of today is being emancipated rapidly from the sway of medieval dogmatism. The whole structure of traditional religious concepts is being rebuilt. Doctrinal creeds and formularies no longer are adequate to express the deeper content of religious consciousness. The old static, dualistic view of the world, with its creationist hypotheses and their counterpart, institutional and theoretical morals, is being replaced by the new scientific outlook with its evolution-concept, its universality of law, and its stringent genetic method. The Church of today is coming rapidly to realize that neither ritual nor dogma constitutes the purpose of its existence and that they do not give any guarantee of its permanency.

"We are," says Professor James T. Shotwell, "in the midst of a religious revolution! The 'old régime' of immemorial belief and custom is vanishing before our eyes. Faiths so old that they come to us from the prehistoric world are yielding to the discoveries of yesterday. Institutions that have embodied these faiths and held the allegiance of the civilized world are now crumbling to pieces

¹ Cf. KIRKPATRICK, CLIFFORD, *Religion in Human Affairs*, p. 353.

or transforming themselves wherever the new forces of the revolution touch and penetrate. The brand of superstition is being placed upon many of the most cherished beliefs of our fathers. The authority of our most venerable orthodoxies, seemingly so securely centered in inspiration, and once so emphatically asserted in creeds, is now assailed from within and without. We are reconstructing the ancient realm in which they ruled. Reason and science which are our ideals, however irrational and unscientific we are, are changing the frontiers of thought."¹ And again: "The City of God . . . is now giving way to the City of Man. And the new city is a *civitas terrena*; it gives up ideals that suited a world to come for practical politics in a stern present. Its characteristics are not temples or cathedrals. It has a place for them alongside its libraries, colleges, and hospitals; but they are only one symbol of its aspiration. It is less interested in heaven and hell than in unemployment and sanitation. It is cleaning streets and tearing down our slums. If religion blocks the way of reforms, it labels that religion superstition and brushes it from its path."² William K. Wallace remarks: "We hear today more about health and hygiene, organization and efficiency, coöperation, specialization and adaptation, than we do about predestination, salvation, or eternal damnation."³

Thus the time-honored landmarks of religious orthodoxy are being obliterated and thoughtful men within and without the Church are seeking for a new type of authority in religion which will not violate the conscience of the new age. In this pursuit resort to external controls of the old order are less likely to yield satisfactory results in the future than they have in the past. "Fundamentalism" is a reversion and will not solve the problem. The new author-

¹ *The Religious Revolution of Today*, pp. 1-2.

² *Ibid.*, p. 65.

³ *The Scientific World View*, p. 65.

ity arises from within. It is the product of present human necessities and human needs. A new cult in religion which cuts across all denominational boundaries is arising and like-minded "liberal" clergymen in all communions are seeking for the constructive readaptation of the essential elements of religion to practical affairs. To some this appears to be a departure from "the faith." To others it portends the revitalizing of religion and the regaining of its waning control.

Revised Ethical Concepts

The changed conditions of life and of thought which have been instrumental in converting a religion of belief into one of action and of causing theological speculation to be valued less than spirit and conduct, likewise have produced new ethical concepts and valuations.

In the first place, morality, in the newer interpretation, does not originate in ready-made concepts disclosed to man in some miraculous manner; it does not arise from a set of moral faculties endowed with faultless moral insight by which behavior is predetermined as good or bad; nor is it a "divine impulse" with which man is equipped as a safe guide to conduct. It is rather an emergent experience from the nature of human relations. It evolves from the useful adjustment to the psycho-social environment. "It asserts boldly that mankind holds the power of controlling its own destiny on this earth, and that it is its highest duty to control it most efficiently."¹

This means, in the second place, that the seat of authority in morals is shifting from theoretical dogma to individual conscience. There exists today no formal code, whether its reputed source is immemorial tradition or divine revelation, which commands obedience on the basis of its final jurisdiction without the sanction of reason. Whether for good or ill the modern approbation of goodness and virtue

¹ WALLACE, *ibid.*, p. 185.

attaches to those forms of behavior which conform to present needs, as we see them, in changing events.

It follows, in the next place, that morality is ceasing to be regarded as absolute. It is no longer transcendental. It is impossible to think of it today in the abstract. Morality is the qualitative appraisal of specific behavior adjustments. Acts are not right or wrong in and of themselves, as objective realities, but are so or not, relative to the degree of assistance or retardation which they offer to socially approved endeavor. Since these social objectives change, morality is relative and adjustable to the changed conditions. Nothing in the history of morality is more certain than that there are no fixed and final rules of right and wrong.

Once more, "The new morality," says Wallace, "is no longer world-denying. Life in itself is among the highest values. This life is worth living in so far as we seek a better understanding of the highest attainable good in the social milieu in which we live. It is in adjustment to this milieu, that science comes to the rescue and shows us that what in the past were considered evil and sin are more often than not due to physical defects or disease, in many cases remediable. Under the circumstances it is not surprising that our whole moral attitude should be changed as the result of the lessons that science is teaching. The influence of science on morality is incalculable. Morality has become forward and outward looking. It no longer would have us accept things as they are, but gives us a valid reason for believing that the 'ought to be,' which is the first concern of morality can be realized."¹

With these changed views have come new ethical valuations. The stern morality of Puritanism, based upon theoretical standards, is giving place to practical morality which is emerging from our changed social conditions. Virtue no longer consists in literal and blind obedience to

¹ *Op. cit.*, pp. 196-197.

arbitrary standards formerly set by community or Church, but in conduct consistent with the highest good of the individual and of society under present circumstances.

Whereas piety in regard to marriage once consisted in loyalty to the institution and any distress which might arise was to be endured rather than to bring reproach upon an institution vested with peculiar divine sanction, today our changed ethical ideas cause us to regard marriage, like the Sabbath, as made for man and not man for marriage, and that the moral value of marriage consists in the mutual happiness and well-being secured to those who enter into it. When these conditions do not and cannot exist, then the moral interests of the individual and of society more adequately are conserved by the sacrifice of the abortive marriage and by the placing of the individuals in a position where such relations as will result in these legitimate expectations may be entered into.

Thus a new humanitarianism in religion and morals has arisen to replace the rigid theoretical standards of orthodoxy of a generation or two ago. It rests upon practical considerations, and values institutions in proportion to the service which they render in the formation of human character and in the development of personality.

Moreover, the present tendencies, we are persuaded, exhibit a rising and not a falling standard of morals, notwithstanding apparent, often real, social disaffection. Because the point of emphasis has shifted many have been misled. The social unrest of our time very largely is due, not to worse conditions, but to better. Disturbances in the economic world are due in the main, not to lower wages or to worse conditions, but to the development of an industrial conscience. Municipal reforms largely are the product of an ethical awakening in civic righteousness. Political agitation reveals the presence of purer political ideals. Religious reformations arise out of higher concepts of divine truth. Precisely in the same manner our modern

social life manifests the signs, not of moral decadence, but of moral advance, and in the end disaster is not likely to result from change which has its origin in an ethical renaissance.

From this point of view there is, then, no necessity for concluding that an increasing divorce rate is due to degeneracy and to a decline in social morality. On the contrary, the divorce trend in certain of its aspects, however difficult they may be to isolate or to measure, may be but the indications of a healthy discontent with present moral standards and may be only the visible evidences of a struggle toward a higher ethical consciousness in regard to sexual and other marital relations.

Moral pressure often adds to the number of divorces in a community by compelling persons to secure them where actual separation already has taken place in order that new ties which have been formed may be legalized. It is true likewise that internal moral compulsion not infrequently leads men and women to break off false relations and to seek through divorce and remarriage to live decently with natural companions.

Views of Liberal Clergymen

The validity of the foregoing factual analysis of present trends in ethical and religious thinking finds substantial confirmation in a survey which has been made of recent books and articles in which marriage and divorce are discussed by clergymen who are known widely as exponents of modern or liberal religious views. Obviously only a brief digest of such a survey can be given here.

The restless mood of the age with its shifting of moral values and sanctions, intensified doubtless by the decay of medieval theological structures and the shifting of emphasis to practical religious ethics, whose tenets only now are in the process of formation, has resulted in a marked tendency to marriage instability. Some ominous

facts cannot but reopen the question of the practicability of the Christian marriage ideal. Has the Christian tradition lost its value in the light of the new social conditions? Are the ideals of Christian relationships but the survival of a faith which no longer can have any controlling value for modern society? Or, on the other hand, does modern civilization offer a new and richer field for the more perfect practice of Christian idealism? On what terms and within what limits can the Church project its influence into the social relationships of the present age? Under what conditions can marriages survive, and what is the contribution that religious principles can make to their survival? These and similar questions are among those to which constructive religious thinkers are seeking the answer today.

One of the most obvious deductions from the literature surveyed is that liberal clergymen as a class do not believe that these questions can be answered by multiplying the legal regulations and ecclesiastical restrictions characteristic of the past. Some have gone so far as to contend that we may well despair of the further value of Christianity if it is to continue to be bound up with the legal dictums of the organized Church. They hold, however, that the Church is not a "refuge for medievalists" nor "can ecclesiastical legislation ever contain the full expression of the religious life." They feel that the grip of ecclesiasticism upon the moral life of our age is becoming enfeebled and that a new authority is demanded for a new age of practical thinking. The apparent impotency of the Church to maintain its authority over the larger "social mind" by appeal to theological dogma is evidence of the fact that "the spiritual quality has gone out of that authority" and that a new criterion must be found which is positive instead of negative and which turns not upon the "defence of authority" but upon the conservation of the highest individual and social values.

Concerning this same issue of the authority of the broader aspects of legal control a prominent minister writes: "All must agree that in the social control of marriage, as of anything else, law must be an embodiment of the living will of the people, and not merely the stony grip of the dead hand of the past. The South Carolina law, which refuses to allow divorce on any ground, is clearly the expression of a tradition, rather than the voice of today; more the sentiment of a proud and conservative past than a legal aid to the social morality of the future."¹

Another fact of importance is that a "new theology" is growing up under "the pragmatic test of social regeneration." This, logically enough, involves a changed attitude toward divorce as "a necessary measure of moral sanitation." The very desire for divorce shows that true marriage does not exist, and therefore to refuse to grant it would be but to preserve an "adulterous relationship." Referring to this type of situation the same clergyman says: "In such a world as he who has eyes must see, divorce, in one form or another, is a necessity if not a commandment. Those whom God has joined together are not lightly to be put asunder; but there are those whom God has not joined together. It needs no insight to see that there are cases where to continue the marriage relation is a deeper affront to morality and public order than any divorce could be. There are conditions of degeneracy, of infidelity, of malicious perversion of all that is holy in the marriage vow, killing not only love but respect, and dissolving any real union by automatic process. There are malignities of disposition, outrages against personality, mordant hostilities, and cruelties of behavior far worse in their erosive effect and blighting destructiveness than any brutality of physical violence or any deflection from the fidelities of wedlock. Such marriages are a lie, and if we

¹ NEWTON, JOSEPH FORT, "What God Hath Not Joined," *Atlantic Monthly*, June, 1923, p. 725.

really desire truth and purity, some way must be devised to heal these social cankers. One hesitates to describe the attitude of those who seem to prefer regularity to reality, and are willing to tolerate any horror so long as it is hidden under the smooth surface of society. This at least is true: the sanctity of marriage lies in a sacred union of hearts, which the Church may bless and the State make legal, but which neither can create or annul. Where love is, there marriage is; where love is not, marriage has ceased to be. For marriage to go on when love is dead puts before us a situation which, if described for what it is, would require the use of words that cut like whips of fire. If a loveless marriage is chaste just because it is legal, then chastity is a thing of rite and rote, an empty form and not a principle of purity at all."¹

These are strong words but they are uttered with as sincere religious conviction as those have who expound the traditional views. The true Christian ideal of marriage, according to this type of religious thinking, is a genuine physical and spiritual union which in its nature is indissoluble, and anything less is not marriage, and cannot in reality with ethical propriety be preserved.

Widespread revolt also is manifest in this literature against the literal and legalistic construction which orthodoxy has placed upon the teachings of Jesus on the subject of divorce. It is maintained that the ecclesiastical viewpoint on marriage was the result of an early ascetic reaction against the spiritual idea of the marriage relationship as taught by Jesus. This has led to a deplorable overemphasis on adultery as the only ground for marriage dissolution, thus making the carnal elements the most important ones and thereby debasing marriage to the physical level in contrast with the high spiritual plane upon which Jesus sought to place it.

Stated in this bald fashion the ecclesiastical position is incompatible with the true Christian ideal. As a conse-

¹ NEWTON, *ibid.*, pp. 724-725.

quence the premise is laid down that a more liberal interpretation must be placed upon the teachings of Jesus, consistent with his high idealism, since his purpose manifestly was to promulgate principles by which marriages might be spiritualized in contrast with the formal concept of wedlock as a legalized sex relationship and appraised on the basis of brute ethics. It follows logically, therefore, that beside adultery there are other "moral equivalents" which equally are effective in destroying the higher ethical relationship which Christian marriage implies.

The fact that conditions of life today present a very different problem from that which Jesus faced is being stressed, and it is pointed out that the problems regarding divorce and remarriage cannot be solved by any legalistic appeal to the specific utterances of Jesus, first because we are insufficiently informed as to his teachings, since we possess but a few fragmentary and detached statements, and, second, because this closed legalistic system of interpretation precludes the possibility of any open-minded evaluation of such teachings as we have.

There seems to be a chorus of protest among clergymen who are chafing under the mandates of ecclesiastical authority. Through their legislative enactments the Churches have been imposing upon the clergy the necessity of acting in accordance with the decrees of the corporate bodies, under penalty of severe discipline. The resentment at this imposition of a conception of marriage which compels them to violate their individual consciences in its enforcement is finding fearless expression.

One clergyman expresses it thus: "No Council, Synod or Assembly has a right to tell me my duty in this matter . . . There are certain people who have been shamefully wronged, disillusioned, and trodden upon through no fault of their own, to whom some little reparation seems to promise itself in a second marriage. I want to be free to discover such of those cases as lie over against my door.

And even in the case of the erring I should like the privilege of not being required to say, 'I also condemn thee, go and sin some more.' "

So far from being in itself a social wrong, there is revealed a growing conviction that divorce at times may be the means of realizing a new spiritual ideal. It has been pointed out that not infrequently "divorce has been the agency of clearing up intolerable and unhealthy social relationships." A woman "clergyman" says: "Now that the moral sense of most people allows another trial on Love's Rialto, there are many individuals who can leave 'that dead thing' to find its own grave, and in the light of some new and dearer affection go on to a renewed promise of joy and life. Can we think that wrong? Who shall dare to say that alone of all mistakes of youth, a mistaken choice in marriage shall be for all like a sentence of doom? Who shall dare to limit the power of rehabilitation of the family order, even when what has failed is the central heart of married love? Our gospel of hope and courage, and renewal of opportunity, and rebirth of affection must know no limits if we would rightly trust the spirit within our being . . . The broken family may be a sad necessity, alike for individuals concerned, and for the well-being of society. To prevent that tragedy is a social duty than which none is more pressing or more open to social effort."¹

It is now our task to note, if only briefly, a few of the results which have flowed naturally and logically from these revised religious and ethical concepts, and which at the same time sustain positive relationships to the interpretation of the divorce trend.

Intolerance of Evils Formerly Endured

In the sphere of domestic relations these changed views make it rather inevitable that morally sensitive people should become intolerant of baneful conditions which

¹ SPENCER, ANNA GARLAND, *The Family and Its Members*, pp. 244-245.

formerly did not appear to be such or which merely were endured with fortitude. The potency of an awakened individual consciousness, of a growing intellectual freedom, of an enlarged economic opportunity, is further increased by a quickened moral perception. This urge especially is effective where clear moral issues are involved. Thus it is not necessary in order to produce a rise in the divorce rate that immorality should increase. Assuming that the moral status in marriage conditions remains the same while moral perception is clarified, the result would be the same as if the moral consciousness should remain constant while immorality increased. Improved ethical standards or increased ethical sensitivity may therefore become as efficient disturbing factors as actual moral deterioration.

This gives significance to the correspondence which manifestly exists, as Lord Bryce affirmed,¹ between the increased number of divorces and the high ethical character of the American people. Here, perhaps more than elsewhere, practices which formerly were condoned within marriage, and still are in many places, have of late more and more become obstacles to domestic tranquillity. Treatment which married women as a rule once regarded as the husband's natural right is now vigorously resented, and the amount of cruelty, physical or mental, which American women will tolerate is diminishing.

This interpretation should mitigate the fear which some have expressed that religion and morality are losing their control. On the contrary, it is only that their objectives have shifted, while their potency remains undiminished. Their force now is applied not to the maintenance of marriage regardless of conditions but to the establishing of higher concepts of its ethical nature. Until the time comes, therefore, that conduct in marriage shall more nearly conform to improved moral ideals, the high divorce

¹ Cf. *supra*, pp. 252-253.

rate, for these reasons, will continue to be a most vigorous protest against the discrepancy.

An Equal Standard of Morals

Practical ethics knows no distinction of sex, and present ethical tendencies are making effective demand for an equal standard for men and women. The social inferiority of women in past ages, due chiefly to their economic dependence, largely is responsible for the rise and for the persistence of the dual standard. Under the penalty of privation for one class, and for the fear of a less luxurious support for another, wives often have submitted to a double standard of morals repugnant to all their finer sensibilities. With the change in the economic and social status of women the necessity for the toleration of such discrimination is passing away. Women of the former class are compelled today neither by the economic necessity of obtaining a living, nor by the force of public opinion out of deference to the marriage institution, to submit to indignities which compromise their womanhood. According to our revised standards it is neither religious nor moral to maintain a relation that involves inequality or injustice. It is not so much that wives have chafed under a social pressure which enforced upon them marital fidelity as that husbands were not held with equal strictness to the same requirements. The woman, therefore, who rebels at the tyranny of the dual standard which would impose upon her alone the necessity of tolerating under the guise of marriage duty, conduct repulsive to her improved moral discernment, finds vindication and justification in the judgment of an enlightened public conscience. So far as the latter class is concerned we are persuaded that the number who value self-respect above mere convenience and who prefer to sacrifice social position rather than to condone moral duplicity, is on the increase.

It has been argued by some, however, that the higher ethical standards attributed to women are doubtless due to group *mores* rather than to innate moral qualities and that the adoption of a single standard is tending not to the tightening of restraints upon men but to the relaxing of those imposed upon women and that women are gravitating toward the greater freedom enjoyed by men. Bertrand Russell says: "Modern feminists are no longer so anxious as the feminists of thirty years ago to curtail the 'vices' of men; they ask rather that what is permitted to men shall be permitted also to them. Their predecessors sought equality in moral slavery, whereas they seek equality in moral freedom."¹

Although this is a thesis, considered libelous by many women, which is as yet unproved, still it is not without a reasonable degree of probability since some women at least are likely to indulge in experimentation in making the adjustment to their new freedom. Even if this should turn out to be the case and if a lapse from conventional standards on the part of some women should occur, too hasty judgment should not be rendered. Whatever may happen no defense can be made today for imposing upon one party to the marriage contract restrictions from which the other is exempt.

It may be that a new interpretation is involved. The question is raised in all seriousness by many thoughtful persons as to whether greater sexual freedom can be labeled "immoral." On its negative side, as contrasted with coercion in a loveless union, few probably would dissent. In its positive aspects there is much diversity of opinion. For those who regard it as a phase of moral decadence, and this group doubtless is vastly in the majority at present, the task of religion and ethics is one of raising the moral standards of both parties alike. There are those, however, and they constitute apparently a rapidly growing minority,

¹ *Marriage and Morals*, pp. 84.

who hold that our sex ethics are badly in need of revision; "that infidelity," as the Rev. A. W. Slaten expresses it, "has cast too large a shadow across the happy face of marriage" and "Infidelity appears to me to be a vastly overrated cause for divorce;"¹ that premarital sex experience may result in better marriage selection and thus prove to possess positive value in creating more permanent unions.

This sounds like rank heresy to the "orthodox" and indeed it may turn out to be such, but it is well to remind ourselves that in the present state of moral uncertainty the issue is far from closed.

Higher Ideals of Domestic Happiness

From the study of the changed religious and moral attitudes we are able to understand more clearly the emergence of the higher ideals of marital happiness to which repeated reference has been made. So long as marriages were maintained by economic necessity or by other types of coercion, either traditional or legal, the happiness of the parties was not of particular concern. With the diminution of these external controls, greater importance attaches to personal inclinations as factors of marriage permanency. Thus ideals compatible with former conditions are inadequate today. If agreeable and helpful companionship cannot be maintained within marriage, there are few other reasons for its existence. Comfortable bachelorhood is preferable to infelicitous wedlock.

As the perpetuity of marriage, therefore, comes to rest upon mutual interest and voluntary coöperation rather than upon necessity, uncongeniality and incompatibility become much more serious matters than they were formerly. They are quite as capable of destroying the present pur-

¹ "Do We Need a New Moral Code," *The Smart Set*, Vol. XXXI, No. 1, pp. 27-28. Quoted by DE POMERAI, *Marriage*, p. 331.

poses of marriage as much graver difficulties did under the old régime. Ethical values then are coming to reside in those qualities of mutual attraction and preference which already are recognized as the only morally valid grounds for entrance into marriage and which more and more are being regarded as essential to its continuance.

In making these observations we are not oblivious of the fact that there are important reasons of social utility for the need to secure a greater stability in marriage. But under what conditions? In the light of our present ethical outlook it is not to be accomplished by any means which rob the individual of the joy of life. We have come to regard sincere affection between the wedded pair as the only decent and moral basis of marriage and their continued happiness in that relation as the only condition which can contribute either to their own or to the social well-being. Any form of coercion, therefore, whether on the part of the Church or State which would compel one person, when love is dead, to live with another person of the opposite sex in repugnant conjugal relations, does violence to all the higher ethical concepts of the enlightened mind and thus comes to be regarded as a species of despotism incompatible with free institutions.

Thus it is coming about, not by purpose or intent, but through the transformations wrought by social forces that the restraint imposed upon divorce by institutional religion and traditional ethics is losing its force and is being replaced by what seems for the time to be a favorable impetus afforded by the new concepts. Popular religious and moral sentiment which more than ever regards the ideal marriage as the supreme method of realizing the perpetuity and education of the race, nevertheless recognizes worse evils than divorce, and is coming not only to approve, but under certain conditions to encourage, the breaking of the conventional marriage tie in preference to the crushing of the human spirit.

In concluding this survey of the effects of what we have termed "external pressures" upon the divorce trend we may summarize the general situation in a few sentences.

In the past, the mighty forces of law, tradition, and economic necessity constituting what has been called the "tyrannical triumvirate," have served as external stays or props which have held together many marriages which lacked spiritual coherence. With the removal of these exterior supports many marriages of this sort have fallen apart and the divorce rate has registered the result. This process has not been the cause of marriage dissolution so much as its condition.

Upon the question of whether or not the preservation of marriages which are not internally self-enduring but which require exterior reinforcement is either individually or socially advantageous, is one upon which, as we have seen, there are honest differences of opinion. As to what view may find ultimate confirmation we cannot at present be assured. The drift at the present time, however, is clearly in the direction of the negative view.

D. Internal Tensions and Strains

CHAPTER FOURTEEN

CHANGING CONCEPTS OF MARRIAGE

IN OUR CONSIDERATION OF THE ADJUSTMENT OF THE INSTITUTION of marriage to external culture changes, in its conspicuous material and other non-material aspects, we by no means have exhausted the subject, nor have we acquired a complete understanding of divorce phenomena. It has thrown much light upon the divorce trend but there are equally important changes of similar character taking place within marriages themselves. They are due in part to the same general causes and conditions, but in other respects they are induced, or at least facilitated, by the changes in the correlated phases of culture.

Without raising the question for the moment as to whether these internal changes could have taken place independently of external changes in the social environment, or as to what effects they might have produced under such conditions, it should be made perfectly clear that the significance of these changes in the immediate situation is to be found in the fact that it is because of the relaxing of external pressures that they are producing their present extraordinary results. That is to say, changing marriage ideals, sexual maladjustments, conflicting behavior attitudes, and even pathological conditions, become effective in producing marriage disaffection and disintegration today because of conditions made possible by the diminution or by the removal of factors of environmental pressure which were disclosed in the three preceding chapters. Maladjustments within marriages always have existed, but on the one hand, they formerly were not consciously acute as they are coming to be today, and, on the other hand, their

effects were repressed in so far as they were perceived, by the conservative forces of social control, so that they could not result in frequent divorce. Now all this is changing and it behooves us to inquire into what is going on within marriages in the way of modification of old ideas and ideals and of the development of new ones, and to examine such changes with the same degree of scientific candor with which we studied external factors, in order that we may acquire a more complete comprehension of certain aspects of the divorce situation which so far have not been revealed. Only by this method can we obtain an adequate grasp of our problem as a whole.

Modern divorce, because of its frequency is often referred to as a "revolt against marriage." Since marriages are not diminishing, the suggestion at once arises that the "revolt" must be due to causes which arise after marriages have been entered into, and to conditions which could not have been foreseen. This would imply a conflict between present ideals and their realization in experience. Ordinarily it is easier, in progress of any kind, to see clearly the stage or condition out of which we have grown than that into which we are growing, or to describe more easily what we are "revolting from" than that which we are "revolting to." In the confused state of present marriage *mores* this seems particularly true. It is relatively easy to formulate past norms for purposes of comparison and contrast, but to construct typically modern ones is difficult. Nevertheless, the description of some characteristic decadent and emergent attitudes which reveal something of the nature of the present disorder is attempted.

Traditional Marriage Norms

One of the most universally recognized functions of marriage in the past has been that of complete sex control. The Pauline emphasis upon connubial relations as the sanctioned mode of sexual indulgence, together with other

ascetic influences, shaped the traditional attitude of the Church and thereby resulted in stressing the formal and legal aspects of marriage. Matrimony thus became the means, not of restricting or refining sex propensities, but of legitimizing them. As a consequence, the legal right to sexual relations, whether loving or loveless, took precedence over all other considerations and rendered "moral" any type of sexual behavior if only it was confined within the marriage state. This degraded marriage to the level of a mere physical relationship and made adultery the only conceivable ground for its dissolution. It is thus that the "Scarlet Letter" became the symbol of the "righteous condemnation" of all extramarital sexual relationships whatsoever, and the illegitimate child and the unmarried mother became the victims of social scorn.

Another decadent norm of marriage had reference to its procreative function. It was a survival of the ancient tradition that the first business of man was to "increase and multiply." It was poetically stated by the Psalmist:

"Lo, children are a heritage of Jehovah;
And the fruit of the womb is his reward.
As arrows in the hand of a mighty man,
So are the children of youth.

Happy is the man that hath his quiver full of them."¹

The tragic and pathetic aspect of this attitude was its effect upon woman. The wife was regarded chiefly from the point of view of potential motherhood. It was to the glory of God and for the good of mankind that she should bear and rear numerous progeny. It was held by the Church to be a heinous offense to "interfere with nature" in matters of procreation. From another point of view, as St. Paul asserted, motherhood was the penalty imposed for woman's transgression in tempting Adam to his "fall" and that "she shall be saved through her childbearing."² Thus

¹ *Psalms*, 127:3-5.

² I *Timothy*, 2:15.

Rev. Anna Garland Spencer explains: "In the old days . . . every woman must bear as many children as nature allowed, and when she could bear no more must give way to a new wife and step-mother to carry on the family life."¹ Martin Luther was crudely and brutally frank in stating the orthodox position: "If woman becomes weary, or at last dead from bearing, that matters not; let her only die from bearing. She is there to do it."²

From the days of the ancient King Hammurabi of Babylon, who argued the inferiority of woman and who assigned to her the position of "mistress of the home," and of King Solomon who glorified her virtues because "She looketh well to the ways of her household,"³ down to the days of New England Puritanism, domesticity has been her traditional lot. Housekeeper, housewife, homemaker, mistress, matron, are still the synonyms which cannote her "sphere." Thus there was added to her function of childbearer that of housekeeper, and the two are by no means incompatible since to a degree the one practically involves the other. When the woman crossed the threshold of her husband's domicile, therefore, her status was fixed. Except in rare, but notable instances, there is little indication that women in general consciously suffered under the restraints imposed by this limited environment. Their training, narrow horizon, and arrested development, together with the economic security which marriage afforded, and the idealization of the domestic burden-bearer rôle, resulted in making it a condition in which women often prided themselves and found contentment. To be a "good," industrious, and discreet wife, mother, and housekeeper satisfied their circumscribed ambitions, and evoked satisfactory community approbation.

¹ *The Family and Its Members*, p. 155.

² Quoted by KELSEY, CARL, *The Physical Basis of Society*, pp. 373-374.

³ Cf. *Proverbs*, 31:10-31.

Concomitantly, the rôle of the husband and father has been that of assumed superiority, domination, and authority, which carried with it the obligation of family support, protection, and discipline. This assumption was sanctioned in both law and creed—instruments, to be sure, of man's own devising. The recognition of the "divine right of husbands" was made a condition of the entrance into marriage by the insertion in the ceremony of the word "obey" to which the consent of the bride was required, and which was enforced by the common-law right of the husband, as interpreted by Blackstone, to chastize his wife for disobedience or other misbehavior with a "moderate correction."¹ This authority was further reinforced by the Church through appeal to the ascetic teachings of St. Paul in regard to women, and particularly in his admonition to wives to be in "subjection to their husbands."²

Another gauge of satisfactory marriage was its success as an economic relation. The Biblical account of woman's creation as a "helpmeet" for man³ fitted in admirably with her dependent economic status and with the rural pattern of industry characteristic of our own early history. Wives took their husbands "for richer, for poorer" with the expectation of uniting their labors in the joint endeavor of making a living and of establishing a home. The degree in which they succeeded in gaining a competence by thrift and economy and of becoming "substantial members of the community" was a measure of the issue of their matrimonial enterprise. If other interests were sacrificed to material well-being it was because they were less important in the existing scale of values. Thus whether they "liked each other" or were physically or mentally compatible was of little consequence as compared with material considerations either of necessity or of advantage.

¹ Cf. MESSER, MARY BURT, *The Family in the Making*, p. 252.

² I *Timothy*, 2: 11 and I *Corinthians*, 14: 34.

³ *Genesis*, 2: 18.

The ultimate test of marriage validity was its durability. A marriage might fail in any or all of its reputed functions, still it was a "sacrament" or a "divine institution" and as such must endure "until death." It goes without saying that under any concept of the function of marriage whatsoever, its dissolution is a concession of failure. But under the doctrine of indissolubility, form takes precedence over function, and the ends which marriage is presumed to serve become subordinated to the mere fact of its perpetuity. But such was the prevailing theory. A marriage was "good" if it lasted, and regardless of its internal character it was obliged to preserve its external configuration.

In summary, the norms of traditional marriage in the "vanishing age" may be summarized as follows: properly legalized sex relations, unrestricted procreation, female domesticity, male domination, economic self-sufficiency, and permanency. If these conditions were met the marriage was "successful" and was socially sanctioned.

Changed Attitudes toward Marriage Functions

When we turn to the question of what is coming to be expected of marriage today it seems impossible to discover any well-developed and satisfactory norms. Ideas on the subject are too much in flux. Herein lies the cause of much of our present confusion. It is not to be doubted that the old marriage ideals are undergoing revision because they are out of adjustment with modern conditions, and that many of the newer views are radical, and in some instances revolutionary, when compared with the old. Often, however, they are negative, in the sense that they represent protest against the old attitudes rather than positive, in terms of constructive and clear-cut objectives for the present and for the future. Thus they portend norms in the making rather than finished products.

Moreover the old norms remain and are deeply imbedded still in religion, law, and public opinion. They formerly

all but universally were approved, and they still are extensively. To criticize them in the minds of many remains heresy and to override them is accounted still as immoral. The modern views, on the contrary, are held by individuals and special groups but are spreading among continuously widening circles wherever conservatism is losing its force and control, so that they are ceasing to be apologetic and are becoming assertive of a new ethical attitude. To persons surrounded by modern influences or emancipated groups, however, it is easy enough to conclude that the whole world has changed and to underestimate the persistence and widespread character of the older concepts.

Under the circumstances, then, the method which seems best suited and most likely to disclose the nature of the internal conflicts which tend to disrupt present marriages is one of studying certain changes which are giving rise to the new attitudes and ideals that clash with the old.

The Romantic Complex

One of the most dominant demands among emergent attitudes is that mutual happiness shall be recognized as the most essential condition of marriage. It is being insisted that love is the essence of true marriage and the prerequisite which renders the fulfillment of any other function either possible or desirable; that the forcible maintenance of a loveless union is unethical and involves sacrifices too great to be compensated for by any utilities which marriage otherwise might conserve.

Commenting upon affection as a marriage resource Professor Ernest R. Groves says: "The desire for an intense, trustworthy, and reciprocating comradeship is not only fundamental in human craving, but the very stress of individuality that accompanies modern culture tends to elevate this motive and make it more and more compelling in the life of the thoroughly modernized person . . .

"The mishaps that occur in matrimony when affection does not prove lasting, or is counterfeited by mere sex attraction without any genuine sympathy, have led to a popular suspicion that matrimony without the assistance of legislative support could not maintain itself. Here, as elsewhere, the exceptions conceal the usual and the normal. Affection rather than law provides the matrimonial foundation in which we have the right to place confidence. People do not marry with less craving for affection than formerly, but with more. The fact that there are few motives for marrying at all except this desire to join in the fellowship of love makes modern matrimony as it now exists in American culture predominately an expression of the profound need of men and women to find their highest happiness in the close, character-developing experiences of marriage and the family."¹

This conception of love as constituting the "ethical core" of marriage and as representing the revised ethical and religious views in regard to matrimony have been set forth at length in the preceding chapter and needs no further elucidation here. There is, however, another quite different, though closely associated phase of the subject which does invite consideration.

The group of sentiments and attitudes which clusters above love in its erotically sensitized and idealized aspects often is referred to as the "romantic complex." It is the over-emphasis upon this complex or pattern and a perversion of the rational concept of the marriage of affection that has given rise to the "romantic ideal" which, in the minds of many, has come to play the dominating role in American marriage.

Thus Mary Burt Messer declares that the United States "has frankly undertaken to build the life-partnership of marriage on romantic love as a base. It is an experiment—

¹ GROVES, E. R., and OGBURN, W. F., *American Marriage and Family Relationships*, p. 29.

if the word may be used of an enterprise so spontaneously entered into—never undertaken with the same completeness at any previous time; but one which must be seen as the inevitable effect of every movement which was sending its rivers into the great flood of individualistic life.”¹

We have seen how difficult it is to make the necessary adjustments to the new ethical ideals in regard to marriage. When so fickle a basis is laid down as that of romantic love, he would be blind indeed who did not foresee that the difficulties would be increased.

First of all are the exaggerated notions of what is implied. Professor Ernest R. Mowrer points out that “The romantic attitude is characterized by the beliefs: (1) that in marriage will be found the only true happiness, (2) that affinities are ideal love relations, (3) that each may find an ideal mate, (4) that there is only one, and (5) this one will be immediately recognized when met, *i.e.*, through love at first sight . . .

“It is this romantic conception of the marriage relation which becomes the focal point in marital discord at the present time. Where the ideal is not realized in the first marriage . . . the tendency is to seek for its realization elsewhere.”²

Mr. Walter Lippman explains “why the popular conception of romantic love as the meeting of two affinities produces so much unhappiness. The mysterious glow of passion is accepted as a sign that the great coincidence has occurred; there is a wedding and soon, as the glow of passion cools, it is discovered that no instinctive and pre-ordained affinity is present. At this point the wisdom of popular romantic marriage is exhausted. For it proceeds on the assumption that love is a mysterious visitation. There is nothing left, then, but to grin and bear a miserably dull and nagging fate, or to break off and try again.

¹ *Op. cit.*, p. 334.

² *Family Disorganization*, pp. 160-162.

The deep fallacy of the conception is in the failure to realize that compatibility is a process and not an accident, that it depends upon the maturing of instinctive desire by adaptation to the whole nature of the other person and to the common concerns of the pair of lovers."¹

Trouble arises, in the next place, because romantic affection is mistaken for an end in itself rather than as a means of achieving marital happiness, and of ennobling and enriching the marital relation. Mr. Lippman is very emphatic on this point. He says: "Lovers who have nothing to do but love each other are not really to be envied; love and nothing else very soon is nothing else. The emotion of love, in spite of the romantics, is not self-sustaining; it endures only when the lovers love many things together, and not merely each other. It is this understanding that love cannot successfully be isolated from the business of living which is the enduring wisdom of the institution of marriage."²

Mr. Bertrand Russell, an avowed champion of modernism in marriage morals, has this to say: "In modern times, that is to say since about the period of the French Revolution, an idea has grown up that marriage should be the outcome of romantic love. Most moderns, at any rate in English-speaking countries, take this for granted, and have no idea that not long ago it was a revolutionary innovation. The novels and plays of a hundred years ago deal largely with the struggle of the younger generation to establish this new basis for marriage as opposed to the traditional marriage of parental choice. Whether the effect has been as good as the inventors hoped may be doubted . . .

"Marriage is something more serious than the pleasure of two people in each other's company; it is an institution which, through the fact that it gives rise to children, forms part of the intricate texture of society, and has an impor-

¹ *A Preface to Morals*, p. 310.

² *Ibid.*, pp. 308-309.

tance extending far beyond the personal feelings of the husband and wife. It may be good—I think it is good—that romantic love should form the motive for a marriage, but it should be understood that the kind of love which will enable a marriage to remain happy and to fulfil its social purpose is not romantic but is something more intimate, affectionate, and realistic.”¹

But even if these distorted views were corrected there still would remain the problem of adjustment to the nature of romantic love at its best. The glamorous halo which surrounds courtship makes it difficult for lovers to discover or to disclose their true selves, or to appraise qualities in each other which under the greater intimacies of married life would possess enduring charm or which would tend to mar endearing companionship. Hence the disillusionment which often follows marriage.

Furthermore, within marriage the expectations of romantic love are difficult of realization. “This romantic attitude,” says Professor Mowrer, “pictures the marriage relationship in terms of love—sexual attraction in a large part—and sets up a standard according to which success in marriage is measured by the satisfaction of a highly idealized desire for response . . .

“Romance, moreover, demands constant demonstration—love, caresses, constant wooing.”²

When for any reason whatever, whether from work, worry, or ill health, either husband or wife fails in the eagerness of this response the joy goes out of life and there arises in the mind of the “neglected” one the suspicion that they are mismatched. The very nature of the complex precludes the assumption that there is anything wrong with the theory itself and prevents the effort to adjust the relation on any other basis. It is either endure or separate. Thus Miss Messer remarks: “Once given this romantic

¹ *Marriage and Morals*, pp. 75-76.

² *Op. cit.*, pp. 160-161.

or erotic love as the *raison d'être* of marriage there is every reason to leap on to the conclusion that with its failure the case is closed. One enters and one passes out by the same door—a logic perfectly expressed in the modern Scandinavian law providing for divorce by mutual consent and without grounds."¹

We have here, then, in the perversion of the concept of the marriage of true affection and in the overemphasis upon the romantic element, one of the obvious causes of the increase of divorces. Marriage failures for these reasons are inevitable, but despite this situation confidence in the ethical soundness of the love bond remains unshaken in face of the clearly recognized fact that the establishment of marriage on this basis even under ideal conditions implies greater fragility. This bond is accepted today as a requisite for entrance into marriage and the courts will annul any marriage in which its place is usurped by force or fraud. Furthermore it has become a punishable offense in law to alienate the affections of a husband or wife and there are many indications that sooner or later this same bond will be held to be as essential to marriage perpetuity and will be trusted as confidently for that accomplishment as it now is for entrance into the marital relation.

The Demand for Compatibility

Another essential of modern marriage is that there shall be congeniality between husband and wife. This goes far beyond the demand for physically satisfying response, important as that may be. Romantic love as the exclusive basis of marriage is hopelessly inadequate. Even connubial love can flourish only in a congenial atmosphere and often is killed by antagonisms which arise from other sources.

The complexity of modern life has made successful marriage incomparably more difficult than it was under

¹ *Op. cit.*, p. 335.

simpler conditions. The wide variety of stimuli evokes great diversity of responses. The character of these cannot be determined in advance. Amorous courtship is incompetent to discover them. They are revealed only by protracted marital experience and hence there is always an element of risk. Unexpected and irreconcilable incompatibilities develop with great frequency.

Fortunate nuptials are the point of departure for successful marriage and not its realization. For this latter purpose there is required temperamental adaptability, intellectual affinity, kindred tastes, parallel personality development, agreeable companionship, mutual forbearance, cultural similarities, community of interests, common objectives, and other like conditions.

This is not to say that a married couple must go through life together like a pair of Siamese twins, nor does compatibility involve identity. Qualities may be complementary or supplementary as the very condition of their congeniality, but they cannot be irreconcilably combative if marriage is to endure.

There are temperaments or dispositions which are organically incompatible and which under the strain of domesticity become morbidly antagonistic. They clash upon the slightest provocation, from which arises constant nagging with consequent irritation. Moreover the nervous strain of living at high tension intensifies temperamental differences.

Intellectual interests within marriage tend either to consolidate or to differentiate. In the former instance sympathetic interest and mutual assistance increases compatibility. On the other hand it often happens that such interests become widely divergent after a few years, or, one party may grow because of greater ability or more extended and fortunate contacts while the other stagnates. Thus inequalities of personality development are prime factors in the "drifting apart" of married couples.

In the absence of former necessities both men and women today seek harmonious companionship in marriage. "It is undeniable, for example," says Professor Ralph de Pomerai, "that the theory of 'feed the brute' has been carried to excess, and that many a wife has literally sold her birth-right for 'a mess of pottage.' Thus innumerable wives, who have been brought up to believe that the surest way to reach a man's heart is by way of his stomach, have learned to their cost, and not infrequently too late, that a man's heart can remain singularly empty even though his stomach may be agreeably full. Hence many men, who find that their wives can fill their stomachs much more efficiently than their leisure, habitually repair—as soon as the evening meal is over—to their club or the 'local,' while the conubial cook is left to while away the time as best she may at home or at the cinema."¹ But the reverse of this situation is equally, and perhaps more frequently, important. The wife who finds her husband completely satisfied with "creature comforts" and who fails in the more refined elements of comradeship or who is guilty of gross neglect, is thereby driven to seek solace in ways not conducive to marital stability.

Sheer obstinacy and the determination to have one's "way" or to compel the other to "give in," unwillingness to "give and take," the proclivity to "fault find," to disparage, to slur, to spite, or to humiliate, are qualities which produce rancor and resentment which destroy the serenity of many an otherwise potentially good marriage.

Now the point to be emphasized here, is not merely the increase of incompatibility but the cold fact that it destroys the internal qualities of cohesion upon which modern marriage is coming more and more to rest and in the absence of former external constraints actually results frequently in marriage dissolution.

¹ *Marriage*, p. 234.

Freedom versus Coercion

Several times reference has been made to the passing of the various historical types of compulsion in marriage and to its transition to a voluntary basis. That such a shifting from outer coercion to inner cohesion, from the expression of tradition, law, and economic necessity to the deep and subtle qualities of human nature has taken place may not now fairly be questioned. The point which requires emphasis here is that this concept of the marriage of free choice is coming today, among others, to be a consciously recognized ideal and that it is being embodied in the new marriage *mores*. Furthermore it needs to be shown that individual adjustments to this pattern affect variously the matter of present marriage stability.

No one should be deceived as to the social costs which are likely to accrue as the result of this change, in terms of increasing divorce, for inexperienced freedom tends always to involve abuses until better ways of using it are devised. But despite this normal expectation the conviction is growing that a greater degree of mutual freedom in wedlock will serve ultimately to make it more durable and that, at any rate, to throw marriage upon its own inner resources and sanctions has far greater promise of future success than to rely upon the reinforcement of the waning exterior controls of the passing age. Meanwhile there are difficulties of readaptation for both husbands and wives, though manifestly of somewhat different character.

In the exercise of this new freedom women appear to be more vitally affected than men. "It is the woman," says Professor Mowrer, "who has been swept farthest from her moorings," probably because she has less "to serve as ballast in the changing world of experience."¹ Potentially released from compulsory wifehood and motherhood, from domesticity and involuntary servitude, from masculine

¹ *Op. cit.*, p. 155.

domination and from the fetters of tradition, women have become free to choose their manner of life even though the choice is that of matrimony. Because heretofore they have been excluded more than men have been from the wider enjoyments and more thrilling experiences of life, there is now apparent the tendency on the part of many toward restlessness and an eagerness for adventure and for experimentation. The "eternal triangle" doubtless will assume a new importance if only from the frequency and variety of the situations created. Until they have acquired more of the "wisdom of experience" the members of the "emancipated" group (and their example will crudely be imitated by others) will be prone to exhibit, both in their marital and in their extramarital relations a degree of rashness and of indiscretion that will prove detrimental to domestic tranquillity.

The problem of mutual or co-adaptation of married partners under a régime of greater freedom presents its own peculiar difficulties. "In old days," says Bertrand Russell, "the wife had to adapt herself to the husband, but the husband did not have to adapt himself to the wife. Nowadays many wives, on grounds of woman's right to her own individuality and her own career, are unwilling to adapt themselves to their husbands beyond a point, while men who still hanker after the old tradition of masculine domination see no reason why they should do all the adapting."¹

It can hardly be doubted that some, at least, of the breakdown of modern marriage is due to the inability of husbands to adjust themselves to the greater freedom which wives today are exercising. For those husbands, and they are legion, who still enter marriage with the inherited tradition of their exalted paternalistic rôle, with its accompanying superiority complex, there is apt to be rude disillusionment. Very early in their wedded lives

¹ *Op. cit.*, pp. 139-140.

they frequently and unexpectedly encounter demands on the part of their wives for the right of self-determination, for independence of thought and of action, for freedom in the choice of friends, or of a career, and the like. Thus their antiquated sense of propriety is shocked, and serious conflicts are inevitable. If, in their own eyes, their dignity or self-esteem is too nakedly compromised, permanent estrangement is likely to result. With this situation in view Beatrice Forbes-Robertson Hale writes: "Every male instinct of domination and sovereignty has to be bred out of the individual before he can attain the status of the new man, and to be a fit mate for the new woman. He has to understand deeply that the woman is half of the human whole and that there can be no more question of either sex dominating the other than of one half of a circle predominating over the other half. When he realizes this fundamental equality of the sexes, and not before, he begins to understand that women, having as much humanity as men, need equal freedom for its development."¹

It scarcely needs to be reasserted in this connection that the reasons why women are able to resist coercion in marriage, and to make effective their demands for greater freedom, regardless of consequences, lie in the general external conditions which surround marriage, as they exist today.

Voluntary Parenthood

No marriage norm of the past has become so completely obsolete within recent years as that of unrestricted procreation. The family of definitely limited proportions is the present purposively adopted standard of American society and is rapidly coming to be that of the whole of Western civilization. While the doctrine of the desirability of controlled fecundity has its theoretical roots in rationally

¹ *What Women Want*, p. 256.

regulated population growth and in its eugenic expediency, it has for its immediate and practical aim the solution of the vital problem of sex adjustment to the inclinations and needs of men and women in the domain of love and marriage. It is of course with this latter aspect that we are concerned here.

That the practice of birth control despite the objections of its critics¹ has become almost universal throughout the more fortunate social and economic groups is attested not only by the low birth rate and the paucity of children in the families of these groups but by the testimony of the persons concerned as to the general use of contraceptives. Katharine Bement Davis reports that of the 985 women, all representative of these groups, who answered her general questionnaire on this subject that "only 78 women expressed disapproval of the use of any means to prevent conception," [173 failed to answer this specific question] and, "of the 734 who believed 'in principle' in voluntary parenthood, 730 had themselves used contraceptive methods."² Doctor G. V. Hamilton says: "It is a matter of common knowledge that birth control is practised by most married people and so our statistics on this point disclose merely what the reader might expect." Thus in his intensive study of 100 men and 100 women of these same cultured groups, he found that "*not a single man or woman in the total group had refrained from the use of birth control methods at some time except those who had found it unnecessary because of infertility.*" Commenting upon Dr. Davis' report Dr. Hamilton further adds: "In all probability this percentage is lower than ours solely because her questions were answered by a group which included more women who had reached the age when child-bearing is impossible."³

¹ Cf., POPENOE, PAUL, *The Conservation of the Family*, pp. 139-153.

² *Factors in the Sex Life of Twenty-two Hundred Women*, p. 13.

³ *What Is Wrong with Marriage*, p. 98.

If argument is needed to justify the wisdom which the facts here disclose it is supplied by Dr. Hamilton in terse language. He says: "Obviously we must grant that for men and women sex desire is more or less constantly present during, at any rate, the first half of married life . . . The consequences are threefold: The couple must have a safe, efficient, and unobstructive method of preventing conception. Or, they must rear ten to fifteen children. Or, they must so limit their physical relations as to cause serious frustrations and harmful emotional tensions, which are bound to lead to unhappiness and perhaps to the destruction of their love and their marriage. The last, of course is merely inefficient, destructive and anti-social birth-control under the disguise of continence . . . Birth-control—the most revolutionary invention of any century . . . — is an inescapable necessity. It is, indeed, an inescapable fact."¹

The effects of voluntary parenthood upon marriage stability have not been studied sufficiently to permit the drawing of very positive conclusions. In this connection Dr. Hamilton refers casually to the fact that "the men and women said nothing to suggest that friction over the question of having children is a frequent or serious factor among the educated class,"² but he explains later that this probably was because "some kind of contraceptive was invariably used" and that "the bulk of the children had been welcome." Furthermore he contrasts this situation with that which existed formerly where "Naturally after five or six children had come, each pregnancy reduced the spousal harmony."

Students of family desertion report that frequent pregnancies and excessive child-bearing often appear as causes for husbands' departures. Thus Lillian Brandt says: "One hundred of the men, almost one-third, [*i.e.*, of the 324

¹ *Ibid.*, pp. 93-94.

² *Ibid.*, p. 96.

cases in which the circumstances attending the last desertion are given] left a short time before, or just after, the birth of a child,"¹ and Professor Earle E. Eubank, speaking of the "periodic deserters" says: "Inhuman as it is, many men may confidently be relied upon to desert on each occasion of their wives' confinement, unable or unwilling to face the problem of financing the additional expense."²

It would appear, therefore, that so far as the voluntary limitation of offspring is concerned it tends to diminish marital discord and to make divorces less frequent.

In certain other respects the effects of birth control upon the stability of marriage are more difficult to estimate.

On the basis of sampling in which 116 happy and 116 unhappy women of "identical age and education" are compared, Dr. Davis reports that "No relationship can be shown between the use of contraceptives and the happiness of married life."³ This finding can hardly be taken as conclusive if for no other reason than that it is extremely difficult to isolate this or any other factor from the influence of other factors which may offset its specific effects. Dr. Hamilton says: "We know that it is distinctly unhealthful to indulge in intercourse under conditions which interfere with the complete release of the nervous tension engendered by the act. We also know that fear of pregnancy is unfavorable to the release of this tension."⁴ Others assert with equal assurance that this same fear is a common cause of frigidity in wives. One writer, before the days of widespread knowledge of contraceptive means, said: "The growing desire to escape the natural consequences of matrimonial life has created a new mental disease, the fear of conception, which makes a mental wreck of many a normal and healthy woman."⁵

¹ *Five Hundred and Seventy-Four Deserters and Their Families*, p. 35.

² *A Study of Family Desertion*, p. 42.

³ *Op. cit.*, p. 78.

⁴ *Op. cit.*, p. 99.

⁵ RUBINOW, I. M., *American Journal of Sociology*, March, 1907, p. 629.

Now it is here that contraceptive knowledge comes to the rescue. To the extent to which safe and satisfactory methods are employed and sex relations are dissociated from their normal physical consequences of procreation, the result is to eliminate the element of fear with its "frustrations and harmful emotional tensions" and to increase the enjoyments of married love so essential to congeniality and compatibility, and thus to contribute definitely to marriage stability.

When we come to the question as to how far the widespread practice of contraceptive methods leads to pre-marital and extra-marital sex indulgence and to its relation to marital discord the answer is not so apparent.

First there is the uncertainty as to the facts. It has been argued logically that the breakdown of authoritative and conventional restraints together with virtual removal of the risk of pregnancy has been the occasion, if not the cause, of a vast amount of sex experimentation, and some figures have been adduced in support of the logic.¹ Others have claimed that irregularities probably are no more frequent than formerly. Certain it is that there was wide disparity between sex standards and practices in early Puritan New England. Cases of Church discipline for fornication and adultery and especially for pre-marital incontinency were "alarmingly frequent" and a writer asserts that "bastardy cases furnished a class of business with which country lawyers seem to have been as familiar as they are with liquor cases now."²

"The reason it is difficult," according to Mr. Lippman, "to know the actual facts about sexual behavior in modern society is that sexual behavior eludes observation and control. We know that the old conventions have lost most of their authority because we cannot know about, and therefore can no longer regulate, the sexual behavior of

¹ Cf. LINDSEY, BEN B., *The Revolt of Modern Youth*, pp. 56-92.

² CALHOUN, A. W., *Social History of the American Family*, Vol. I, p. 134.

others. It may be that there is, as some optimists believe, a fine but candid restraint practised among modern men and women. It may be that incredible licentiousness exists all about us, as the gloomier prophets insist. It may be that there is just about as much unconventional conduct and no more than there has always been. Nobody, I think, really knows. Nobody knows whether the conversation about sex reflects more promiscuity or less hypocrisy.¹

Until we have more convincing evidence one way or the other on the subject it seems wise therefore to reserve judgment. Doubtless all will agree, however, that promiscuity in sex relations is sufficiently extensive to raise the question as to its present effect upon divorce. In all those groups, and they probably constitute a preponderating proportion of the population, in which the older sex ethics prevail, it is a continuing source of marriage dissolution, and any increase in marital disloyalty would tend to manifest itself in more frequent divorces. But just here a difficulty in interpretation arises. We have seen that divorces on the ground of adultery have shown a relative decrease for the entire period for which we have the statistics.² Several possible explanations may be offered for this phenomenon: (1) Adultery may be on the decrease; (2) it may neither be increasing nor decreasing but persons may be growing less sensitive to the offense and more willing to condone it; (3) some may be less inclined today to sue on the ground of adultery when other less offensive reasons may be alleged; (4) other causes may be assuming greater importance or may be coming to be regarded as of greater consequence; or, (5) adultery may be on the increase while at the same time through the more extensive and effective use of birth-control methods sex gratification is isolated from its reproductive function and the possibility of detection is being reduced toward the vanishing point.

¹ *Op. cit.*, p. 286.

² *Cf. supra*, Chap. V, Table XIV, p. 131.

It is likely, to be sure, that different causes are operative in different cases and that a combination of these and many others are included in the total effect, but the last-mentioned probability is believed by many to be the most potent single factor. In the absence of proof the reader is left to draw his own conclusions.

Premarital Sex Experience

As to the assumed greater freedom of antenuptial sex experience made possible by the knowledge and use of contraceptives upon the permanency of marriages, there are likewise great differences of opinion. There are those who contend with much plausibility that premarital promiscuity tends greatly to overemphasize the factor of sex; that it leads to the deterioration of character through loss of self-control by yielding to the "imperiousness of passion," to the conditioning of sex life to a series of fragmentary episodes, to the building up of a taste for sexual variety incompatible with constancy in marriage, to the prevention of the deepest intimacy of lovers made possible by the knowledge that they are giving themselves chaste to each other in marriage, and to the increase of venereal disease. All these are conditions which are believed to jeopardize the happiness of the marriage relation and therefore to add to the probability of divorce.¹

On the other hand there are some writers whose moral earnestness in the frank consideration of these perplexing problems is no more to be challenged than that of those who hold the views above mentioned, who regard the matter quite differently. They contend that it is largely the survival of ascetic attitudes toward normal sex reactions that is creating the present conflict between the older sex *mores* and modern sex conduct and which results in much of the sex preoccupation of the present.

¹ Cf. POPENOE, *op. cit.*, Chap. II.

They argue that the biological urge of sex, like hunger, is inherently neither moral nor immoral and that because of its imperious demands it has always evaded the prohibitions and taboos which puritanical society has invented to curb its normal expression; that the deterioration of character which results from sex indulgence outside of wedlock is due to artificially induced mental conflicts in the form of feelings of shame, guilt, and remorse due to perverse sex instruction and to the violation of conventional sex *mores* which have made such relations illicit, and not to the experiences themselves; that abnormal sex repression often leads to physiological and psychological consequences of serious character such as pathological disturbances, neuroses, sex obsessions, auto-erotic and homosexual practices, and even morbid attitudes toward marriage and toward life in general. A few go farther and claim, as for example, that "If judicious non-procreative sexual intercourse is neither harmful nor immoral among married persons, but healthy and beneficial, it inevitably follows that it cannot, of itself, be harmful or immoral when indulged in by unmarried persons. Official marriage simply implies legal recognition, mutual consent, and a willingness to face certain obligations plus the receipt of an ecclesiastical benediction in case of a religious ceremony. Where mutual consent exists between two single persons, and where neither is under any obligation to the other, and the possibility of offspring is definitely obviated, the only thing that discriminates married from unmarried sexual intercourse is the absence of the formality of a legal or religious ceremony. Such a ceremony, however, manifestly does not affect the characters of the persons concerned (except in so far as they are susceptible to social disapproval), the health of coitus, nor the morality or immorality of sexual intercourse, unless we are prepared to admit that marriage is a metaphysical business, or that it is unnatural and immoral for a person to marry more than

once. The metaphysical contention is irrational and unverifiable while the assumption that no person may marry more than once is equally absurd and contrary to both past and existing practice."¹

Strange as it may appear to those who have been reared under the domination of, and who hold to, the traditional sex ethics, special inquiries have elicited from many disillusioned young people the information that they do not regard antenuptial sex experience as a matter which decreases personal attractiveness, any more than in the case of one widowed or divorced, nor are they averse on that ground to the selection of such a person as a marriage mate. In fact some have alleged that freedom of experimentation not infrequently, doubtless, would lead to wiser selection of marriage partners and would thereby tend to decrease the risk of sexual incompatibility which is so disastrous to marriage stability at the present time. One writer is so bold as to assert that instead of sex sampling being adverse to marital contentment that "stable relations with one partner are difficult for many people until they have had some experience of variety."²

While nobody knows what the outcome of the present moral and intellectual ferment in regard to sex relations will be, it would be absurd to close our eyes to the fact that new appraisements of old standards are being made and that revised ethical values are emergent, and, furthermore, that these are important social phenomena with which the student of marriage and divorce must deal.

Such facts may be disconcerting to the traditionally minded but the ostrich-like method of covering one's eyes to existing realities instead of facing them fearlessly, promises nothing in the way either of understanding them or of dealing constructively with them.

¹ DE POMERAI, *op. cit.*, p. 327.

² RUSSELL, *op. cit.*, p. 282.

CHAPTER FIFTEEN

SEXUAL MALADJUSTMENT

The Modern Sexual Revolution

“LOVE AND HUNGER ARE THE FOUNDATIONS OF LIFE, AND the impulse of sex is just as fundamental as the impulse of nutrition. It will not remain absent because we refuse to call for its presence, it will not depart because we find its presence inconvenient. At the most it will only change its shape, and mock at us from beneath masks so degraded, and sometimes so exalted, that we are no longer able to recognize it . . . When we touch sex we are touching sensitive fibres which thrill through the whole of our social organism, just as the touch of love thrills through the whole of the bodily organism.”¹

Because marriage is the human institution which is founded upon sex needs, just as that of the economic is upon those of nutrition, it cannot be considered apart from these imperious demands. Since the continuance of the species is conditioned upon sex functioning, and since nature cuts off from participation in this process all those who are deficient in sex desire, or those who for any reason whatsoever abdicate their prerogative, we perceive at once its paramount importance, persistence, and predominance in human affairs.

Thus even among other animals and also in the proto-human stage of development, that is, before man became consciously aware of the meaning of his habitual sex reactions, or was able to rationalize them, the biological urge of sex resulted in some form of mating and it has

¹ ELLIS, HAVELOCK, *The Task of Social Hygiene*, pp. 255-256.

continued to be an interest around which folkways, *mores*, customs, traditions, and law have clustered until it eventuated in what we know as the institution of marriage.

It is unnecessary for our purposes to trace the history of this evolution. It will suffice to point out that for the most part it has been unplanned. The nature of the prevailing culture environment has determined almost automatically the modes of sex expression. Nevertheless there have been many periods in history when sex consciousness has arisen because artificial barriers against natural sex adjustments have been erected, the most notable of which, prior to our age, being that of the ascetic reaction to sex relations during the early centuries of the Christian era.

Probably at no other time, however, has there ever been anything like the "sexual revolution" of the present, either in regard to its nature and extent or to its effects upon the stability of marriage. It is pertinent, therefore, to inquire into the reasons for this situation and to note the chief contributing factors.

First of all, the sexual revolution of today should be visualized as a part of the larger movement of the abnegation of traditional authority and of arbitrary external control in government, economics, religion, and morals. It is, therefore, not an isolated phenomenon. Specifically it is a reaction against medieval sex repression which has survived the subversion of ecclesiastical autocracy in practically all other correlated phases of the subject and as usual the severer the repression the more violent is the reaction. Mr. Walter Lippman describes the general process thus: "Long after they [*i.e.*, the Churches] had abandoned politics to Caesar and business to Mammon, they continued to insist upon their authority to fix the ideal of the sex relations. But here too, the dissolution of their authority has proceeded inexorably. They have lost their exclusive right to preside over marriages. They have not been able to maintain the dogma that marriages are indissoluble. They

are not able to prevent the remarriage of divorced persons. Although in many jurisdictions fornication and adultery are still crimes, there is no longer any serious attempt to enforce the statutes. The churches have failed in their insistence that sexual intercourse by married persons is a sin unless it is validated by the willingness to beget a child. Except to the poorest and most ignorant the means of preventing conception are available to all. There is no longer any compulsion to regard the sexual life as within the jurisdiction of the commissioners of the Lord."¹ It is this last phase, namely the control of sex relations, however, in which the transition has longest been delayed and now is least effectively consummated, that is the storm center of the present agitation. Chiefly because of the deep-rooted and pervasive doctrine of the inherent sinfulness and revolting character of sex and of the consequent rigorousness of sex repression which so long prevented the open rupture with modern liberalism, there is an accrescent vehemence to the present revolt which presages excessive counter-reactions, overemphasis, vibrant emotional tensions, indiscreet experimentation, and irrational attempts at adjustment.

Quite aside from the issues of the conflict just alluded to, the sex symptoms of the present are due in no small measure to the growth of science and to its application to the study of man himself and to all his attributes. In this process the investigation of sex in both its biological and psychological, as well as in its sociological, aspects have had their full share of attention. Apart from its procreative function it has acquired a new significance because of a better understanding of its nature and of its wider potency. On its physical side, much is due to the modern science of endocrinology which throws new light upon the functioning of the interstitial cells of the sex glands which affect both the primary and secondary sex characters as well as

¹ *A Preface to Morals*, pp. 88-89.

the physiological conditions of growth, adolescence, health, vigor, and adult efficiency. In its psychic aspects the phenomena of sex behavior have been studied with the aid of psychoanalytic technique and the Freudian complex. Regardless of the ultimate verdict of science as to the validity of present findings as a result of these tentative procedures, a new appreciation of the relation of sex to mental conditioning has been effected. Sex is now known to have a definite relation to mental growth, balance, virility, to temperamental stability, and to character development. The relation of sex to society has of late been studied with clinical directness, and there is an extensive literature on the subject.¹ As a result the conviction is inescapable that sex is a dynamic factor in civilization of far deeper significance than heretofore has been appreciated. It has been one of the determinative elements of civilizational development. It conditions all phases of human relations. It is bound up intricately with all reactions whatsoever of one sex to the other, and, specifically, it has assumed in present society a new rôle in its effects upon the nature, the happiness, and the durability of marriage. Thus sex, as a consequence, no longer can be relegated to the domain of the magical, the mystical, the mysterious, or the transcendental; it is recognized today as a vivid reality—a vital factor in human experience—never absent, always to be reckoned with, arousing new interest, requiring revision of old attitudes, and necessitating more adequate adjustments to other conditions of life.

In addition to these two primary causes for the present sex orientation there are several correlated factors which have contributed largely to its transformation into a mania or craze.

The economic and social liberation of women and their consequent invasion of the world of affairs on an equal

¹ Cf. CALVERTON, V. F., and SCHMALHAUSEN, S. D., *Sex in Civilization*. Consult this work for other references.

footing with men served to break down the old taboos against the free association of the sexes. Thus the growing familiarity of men and women irrespective of marital status in factory, office, store, places of recreation and amusement, and the like, without chaperonage, while it has increased mutual understanding and respect, at the same time it has afforded new and extensive opportunities for sex stimulation and appeal.

The normal interest in sex is overstimulated by its exploitation in modern fiction, in the drama, in motion pictures, in periodicals, in the press, and in the tabloids. There is much candid and critical discussion but there is much more that is intentionally morbid in its appeal. They play up the sensational, the erotic, the salacious, and the pathological. The current attitude is largely that of satire and ridicule. If popular fiction and the "sex-ridden" stage are not reflecting life they are moulding it. The constant and obtrusive sex stimulation thus afforded, increases sex-consciousness and sex-mindedness which molds attitudes with consequent effects upon behavior.

Almost all writers on this subject since 1918 have stressed the effects of the "unstabilizing aftermath" of the World War upon the sex problem. "We need not seek much further," says Dr. Schmalhausen, "for the realistic background of that sexual revolution which perturbs the minds of all of us, even of those who think of themselves as equipped to face the facts of life, however novel and disquieting and radical . . .

"Every illusion and reticence and taboo on natural impulse—and its direct unpremeditated expression—have been shattered to smithereens by the public experimentalism carried on by vast armies of men and women who practised passion and love with a clinical directness under the abnormal stimulation of The War. What we witnessed, graphically and vividly, was Passion's Coming of Age.

"The most novel of the phenomena out of that perturbing and revaluating period is the birth of sex-consciousness."¹

Frankness, freedom, and exuberance of discussion of sex matters is both an evidence of the pervasiveness of sex-consciousness and an added stimulus to its intensification. The passing of prudery is wholesome. It removes the subject of sex from the domain of the furtive, the secretive, and the surreptitious, with its incitement to erotic curiosity and perversion. On the other hand, ubiquitous conversation on such subjects as sex release, "the revolt of youth," promiscuity, birth control, affinities, the art of love, free love, companionate marriage, infidelity, love adventures, the "eternal triangle," the salacious details of divorce scandals, and a wide variety of similar topics, and in addition the popular indulgence in suggestive and often palpably obscene stories and jokes, serves constantly to keep sex in the foreground of consciousness and to reveal an enormous amount of sexual morbidity and of eroticism.

Thus the sexual complex with its high emotional tone appears as the natural outcome of this set of conspicuous and convergent factors, to which, of course, many others might be added.

It is next necessary to view it as a cause of conflict and of maladjustment in marriage with its consequent effect upon the frequency of divorce.

The Sex Factor in Modern Marriage

It is probable that there is neither more nor less biological sexual ardor in the race now than formerly, but it seems certain that the conditions of modern life afford a keener and more insistent urge to its activity. Numerous writers have pointed out that man under the tutelage of civilization has become more erotic than were his sub-human and

¹ CALVERTON and SCHMALHAUSEN, *ibid.*, p. 375.

savage ancestors.¹ Primitive man's sexual needs, like those of many stolid and uncouth men still, required little more than animal gratification for their complete satisfaction. With the cultivation of imagination and with more highly sensitized, variegated, and complicated emotional reactions, together with the more constant and insistent stimulation afforded by the contacts of a more complex social environment, it was logical to expect that sex would come to occupy a larger place in consciousness and in the scheme of life; that sex desires would become more involved and less easily satisfied, and such, indeed, seems to be the case.

Partly because of the greater sex release of the present, but mostly as a result of the scientific investigation of the subject, a new interest in the extra-procreative functions of sex has been aroused and a new appraisal of their effects is in the making. As might be expected, these revaluations differ greatly and there is as yet no finality to the results. But the preponderance of opinion among those who have combined the physiological, chemical, and psychoanalytic techniques in their inductive approach is to the effect that the release of sex tensions under wholesome conditions is to enhance both physical and mental well-being; that "a normal sex-life is among the chief health promoting agencies . . . Vitality is heightened, equipoise established or regained, moodiness and nervous irritation allayed;"² that "sexual pleasure, wisely used and not abused, may prove the stimulus and liberator of our finest and most exalted activities;"³ and that particularly in the married state, "the complete act of union . . . symbolizes, and . . . actually enhances, the spiritual union . . . At the same time the act gives the most intense physical pleasure and benefit which the body can experience, and it is a

¹ Cf. e.g. BEALE, COURTENAY, *Wise Wedlock*, p. 14 n., also DE POMERAI, RALPH, *Marriage*, pp. 85-86.

² BEALE, *ibid.*, p. 61.

³ ELLIS, HAVELOCK, quoted by LIPPMAN, *op. cit.*, p. 301.

mutual, not a selfish, pleasure and profit, more calculated than anything else to draw out an unspeakable tenderness and understanding in both partakers of this sacrament."¹ On the other hand, undue sex repression is as detrimental as its proper release is beneficial and predisposes to both physical and mental disorders. "Just as a normal sex-life is a contributory factor to a healthy mental condition, so also does repressed or unsatisfied sex-life frequently lead to mental abnormalities, neuroses, and even insanity."² Dr. C. G. Jung says: "I am often asked why it is just the erotic conflict, rather than any other, which is the cause of neurosis. There is but one answer to this. No one asserts that this necessarily ought to be the case, but as a simple matter of fact, it is always found to be so,"³ and Dr. W. H. R. Rivers maintains that "the great majority of neuroses of civil practice depends on the failure of balance between the . . . sexual instinct and the very complex social forces by which this instinct is normally controlled."⁴

While theoretically these effects are presumed to manifest themselves alike in both men and women, tradition and custom have decreed otherwise. The ascetic and puritanic repression has affected women adversely to a far greater extent than it has men. It inhibited or subverted the expression of latent sex interest on the part of women until they came to be regarded, and by consequence often actually were, as beings minus normal sex response and as merely the passive means of male sex gratification. This concept now is revised. It is known today, however narrowly appreciated, that the sexual potentialities and needs of women, while by no means identical, differ in no fundamental way from those of men; that the physical and psychic benefits which accrue from the normal sex life of

¹ STOPES, MARIE, *Married Love*, p. 70.

² DE POMERAI, *op. cit.*, p. 221-222. Cf. also pp. 104-105.

³ Quoted by DE POMERAI, *ibid.*, p. 222.

⁴ Quoted by DE POMERAI, *ibid.*, p. 222.

modern women are of the same sort as those of modern men; that abnormal sex repression in the case of women exacts even more serious penalties in the form of dyscrasia, neuroses, psychoses, and other pathological symptoms, than in the case of men.¹

The implication from the analysis so far is clear. Sex has come to play in modern marriage a far greater rôle than formerly. It is bound up intimately with the happiness, and therefore with the stability of the marriage relation. Dr. H. W. Long very aptly stresses this fact: "*Right here is the very centre and core of the real success or failure of married life. Around this fact are grouped all the troubles that come to husbands and wives. About it are gathered all the joys and unspeakable delights of the happily married—the only truly married. It is these items which make a knowledge of the real conditions which exist, regarding this part of married life, of such supreme importance. If these conditions could be rightly understood, and the actions of husbands and wives could be brought to conform to the laws which obtain under them, the divorce courts would go out of business, their occupation, like Othello's would be gone indeed.*"²

In order to afford a better knowledge of the problems here suggested or at least to indicate the direction we should look for the sources of disaffection we have subjoined a brief discussion of a few of the chief factors.

Inadequacy of Sex Knowledge

Among the many specific causes which result in the failures and tragedies of marriage which lead directly to the divorce courts are those due to ignorance and lack of insight in regard to sex. "No one can estimate," says William J. Fielding, "the damage that has been done by

¹ Cf. DE POMERAI, *ibid.*, pp. 218-224.

² *Same Sex Life and Same Sex Living*, p. 54.

the traditional practice of placing a ban on knowledge concerning the sex side of life. Physicians, lawyers, and others who are constantly brought into intimate touch with the private affairs of their patients and clients, know that the lives of untold numbers of men and women have been ruined by lack of understanding of their sexual nature, and that innumerable marriages have been shattered by a basic ignorance of sex problems."¹ It is irrational to suppose that the sex problem can be solved by this purposive "taboo on sex knowledge."² The studied reticence and secrecy on the subject, on the contrary, is the method best adapted to drive it into the realm of morbid curiosity, erotic imaginings, and gross experimentalism. The only possible effect of the habitual evasion of sex discussion or of the persistent denial to children on the part of parents to whom they normally turn, of the information which they naturally and inevitably seek concerning the basic facts of life, is not to dispense with the matter, but to compel them to secure it clandestinely from sources least likely to be wholesome and most likely to pervert any rational or moral reaction to it.

Moreover, the enforced ignorance of the nature and of the meaning of the physiological and psychological manifestations of sex at adolescence, with the accompanying erotic impulses and reveries, mental conflicts, and general emotional instability, is a fruitful source of distress, of physical perversions in the form of auto-eroticism and homosexuality, and of dangerous neuroses and other psycho-pathological symptoms, too well known to need elaboration.

More serious still is the lack of adequate information concerning the sexual factor in marriage. "It is one thing," says Mr. Fielding, "to anticipate matrimony with a romantically sentimental notion of what marriage implies

¹ *Sex and the Love Life*, p. 3.

² Cf. RUSSELL, *Marriage and Morals*, Chap. VIII.

. . . It is an entirely different thing to prepare for marriage with the understanding . . . of the actual sexual foundation that underlies the whole complex structure."¹

The tragedies of courtship which is a normal, but in the absence of sex knowledge often a bungling process of sexual orientation, are due in the main, not so much to the overexcitation of sexual desire and to its intended and usual consequences, as to the lack of realization that the emotions engendered in petting and fondling are the result of purely physiological processes due to the secretion by the sex glands of chemical sex hormones or endocrine substances which inhibit rational functioning and induce emotional attitudes which often are identified with, or are mistaken for, genuine affection and which thus lead to mismating of persons otherwise incompatible and undesirable as life companions.

Again, the chances of permanent marital happiness are diminished in multitudinous instances by the fact that young people enter upon marriage, as they often do, in ignorance of even the most rudimentary knowledge of sex physiology and psychology; that, due to this lack, young men often are guided alone in their initial marital behavior by the drive of their own sexual exuberance unaccommodated to the sexual erethism of their brides; and, that young women not infrequently are initiated into connubial experience under conditions which needlessly transform the nuptial couch into the bier of their affections.

Furthermore, such reliable information as we have at the present time on the subject of sexual maladjustment within marriage leads unmistakably to the conclusion that much, if not most, of it is due to sheer ignorance of the sex factors and forces which underlie and condition wedded life, and that the larger part of it would be preventable, and much of the rest would be curable, as the result of the acquisition of adequate knowledge which now is extant but which

¹ *Op. cit.*, p. 98.

to most people hitherto has not been available and still is denied to many.

By way of confirmation of these generalizations, attention is called to the findings of Dr. Katharine Bement Davis on this subject. She says: "In two groups of women of the same age and education, one of which had found marriage a happy institution and the other had not, we saw that nearly 57 per cent of the happy group had received some general sex instruction while only 44 per cent of the unhappy group had been so instructed, and that the difference between the two groups was demonstrably significant in its relation to happy marriages . . .

"Of 438 who state that they had no preparation for married life, we find that 257, or 58.6 per cent, regret the fact that they went into marriage blindfold as to its relationship and believe that adequate instruction would have helped them in adjusting their lives."¹

In this connection the following observation from Mr. Fielding is apropos: "Nevertheless, despite the obvious desirability of preparation, little or none has been given to young people. Then when the ship of matrimony has drifted into dangerous waters, or has become hopelessly wrecked, the same static-minded people who say in effect, that nothing should be told about the vital problems of life, or no sexual information given, are the first to rise in dismay and lament over the disintegration of modern marriage and presage the collapse of our civilization."²

Great as are the misadventures due to lack of sex knowledge, most writers regard the perversion of sex attitudes as of even more serious consequence. In the summary of conclusions in their intensive and scientific investigation *What Is Wrong with Marriage* Dr. G. V. Hamilton says: "The many marriages of this study leave but one vivid and sure impression—the sense that most husbands and wives

¹ *Factors in the Sex Life of Twenty-two Hundred Women*, pp. 63 and 65.

² *Op. cit.*, p. 92.

have been so thoroughly warped by the training and environment of their childhood that they can do very little today to better their condition. Indeed, there in the hapless dilemma of these thwarted people lies the only incontrovertible conclusion of this research: The proper attitude of the parent toward the child is the only sure cure for the ills of matrimony today. And it will not take effect for twenty years."¹

Under the domination of ascetic and orthodox morality, children from earliest infancy have been taught either negatively, through the "conspiracy of silence" or positively, by innuendo or by direct affirmation that sex is vile; that certain parts of the body are indecent; that any thoughts about, allusion to, or discussion of, sex is obscene; that there are natural feelings and impulses of which they are to be ashamed. They have been lied to persistently about where babies come from, and these lies have been labeled "white" because told in the supposed interest of morality. But invariably when the truth has been obtained, perhaps in garbled and obnoxious form, they have been forced to the conclusion that their parents could not be trusted as sources of sex information, nor confided in with regard to sex problems, thereby creating a chasm between them and their parents which with the greatest difficulty, if ever, can be bridged. They learned also from such experience that sex is always the "lust of the flesh" and must be pursued clandestinely and surreptitiously—a matter about which it is legitimate, and indeed one is expected, to lie and to deceive.

Thus an irrevocably baneful pattern-attitude in regard to sex, toward parents, toward persons of the opposite sex, toward sex experience, and toward marriage, sedulously has been built up, which has become so thoroughly ingrained in the texture of personality that, as Mr. Russell

¹ HAMILTON, G. V., and MACGOWAN, KENNETH, *What Is wrong with Marriage*, p. 287.

remarks: "Very few men and women who have had a conventional upbringing have learnt to feel decently about sex and marriage."¹

It is impossible for young people so trained and psychologically conditioned to approach marriage, to say nothing of entering into it, naturally or rationally. It makes the selection of a mate a hazardous venture. Courtship is not merely a process of wooing but one calculated to enable young men and women to find and to win suitable and desirable life companions. In the absence of any adequate instruction it is the nearest approach we have to preparation for marriage, although it never can be a satisfactory substitute for such lack. This process is vitiated from the start. It is bad enough to be ignorant of the nature and meaning of the surgings of sexual feelings which are aroused in the intimacies of courtship; it is worse to experience them with a morbidly conditioned attitude toward them, so that their manifestations must excite sordid reactions and any allusion to them is rendered vulgar. Thus the finer sentiments and the ideals essential to selection on the basis of desirable character traits and other qualities of fitness are inhibited or subverted and courtship is reduced to the level of the sensuous.

It is probable, however, that the most deleterious effect of this program of sexual inversion and repression upon marriage is to be found in the subversion of the normal sexual functioning and its consequent sexual anesthesia which is common among women particularly in the upper and middle social strata of society. "A woman," writes Dr. Beale, "owing to the inhibitory nature of her training, and the false ideas concerning sex which have been inculcated into her . . . may often be without emotional initiative—her sensory and emotional capacities may have been so effectively damped down that she will remain

¹ *Op. cit.*, p. 98.

unstirred even in marriage."¹ Abnormally reconditioned in her entire psycho-physical response mechanism as a result of perverse sex training in girlhood, a woman may find it impossible later with any amount of correct thinking, to enjoy, at any time, normal sex-response reactions, and Dr. Beale wisely and correctly states that "the man who has what he calls a frigid wife at home, with no ardour answering his ardour, suffering his caresses without returning them—palpably, unconcealedly apathetic—will sooner or later be tempted to seek consolation elsewhere."² On the other hand, consequent and acute dissatisfaction with married life on the part of such women, in ignorance of the cause of their own ineptitude and believing it to be due to physiological mismating, themselves not infrequently turn to extramarital adventures in search, though usually ineffectively, of more satisfying experience.³

It should be noted in passing that much sex agitation of the present is a reaction against this ignorance and superstition and that old attitudes are undergoing revision, but meanwhile there is enough resistance to the old views to bring them into sharp conflict with the new, and a sufficient amount of marriage maladjustment resulting from the old repressions to make these factors important in the explanation of the rising divorce rate.

Lack of Understanding of Sex Needs

In a preceding section we noted the relation of sex needs to physical and mental well-being. That these needs never sufficiently have been appreciated or understood, particularly as they affect marital happiness, can now be seen to be the results, very largely, of prudery and of false teaching, in addition, of course, to their subordination to economic necessity and to the domination of ascetic traditions. In

¹ *Op. cit.*, p. 50.

² *Ibid.*, p. 52.

³ Cf. HAMILTON and MACGOWAN, *op. cit.*, p. 237.

the light of present interest, knowledge, and changing attitudes, they no longer can be ignored. Under conditions as they formerly existed, sex adjustments within marriage were largely a matter of chance. If, because of fortunate endowments or favorable aptitudes, no serious difficulties arose the couple was lucky, but if trouble did develop it was merely "unfortunate." The emphasis lay upon the fact that conjugal sex relations were legalized. They were held by the law as interpreted by the courts to be matters of "right" or of "duty" regardless of their nature or consequences. Higher ethical considerations, such as adaptability, mutual satisfaction, and happiness were of minor importance. Therefore a studied or considerate attitude toward such relations was neither prompted nor required.

Today, among an ever increasing number of sensitive and enlightened persons this situation is being reversed with the result that legal bonds and other environmental pressures are inadequate to guarantee marriage permanency in the absence of sexual affinity or in the presence of sexual antipathy. A better understanding of sex requirements between husbands and wives, therefore, is a present prerequisite to improved marriage stability.

While men and women are predominantly alike because of their common inheritance of human nature, original and acquired, yet because of inherent divergencies in their biological nature, they react differently to a wide variety of common stimuli. Thus Mr. Joseph Jastrow explains: "The biological differences are nature-made and authentic; no decree of man can alter them in any essential, rough-hew them as radically as his mode of acceptance or of protest against sex-determined assets and liabilities may attempt. 'Male and female created He them.' There are no human beings—only men and women. Sex remains the eternal motive of nature's organic design; hence the eternal feminine and the eternal masculine."¹

¹ In CALVERTON and SCHMALHAUSEN, *op. cit.*, p. 129.

While these diversities in traits affect the relations of men and women in all the affairs of life, we are concerned here only with those which affect the relations of sex in marriage. Of very great importance, then, is the appreciation of the divergence in sexual desires and needs of men and women. "Because of the profound differences between their sexual make-up," says Mr. Fielding, "which has behind them a radically differentiated biological history, they approach the intimacy of the conjugal relations from quite different angles."¹

No trained student assumes, however, that these biological sex differences alone can explain actual response variations. If these characters were identical, social conditioning, as we have seen, would result in diverse manifestations. Thus Mr. George A. Dorsey explains: "Normal inherent modes of sex behavior, no less than other inherent modes of response for adjustment useful for the species, are subject to learning: the whole sex-complex becomes conditioned. Individual sex behavior is only to be understood in the light of individual inheritance of mate-hunger mechanism and the learned modes of response for adjusting the impulse to that mechanism.

"There are always: the individual; the situation. Both are complex in human society because the individual is capable of such varied responses and because society assumes the right to condition the responses. In every phase of bisexual behavior, certain unvarying biologic factors and special varying social factors combined make up the definition of the situation. But back of the sex-complex is a fact-complex which must not be mislaid."²

What, then, are some of these "unvarying" and "inherent" sex-behavior factors?

The difference in biological functioning of the male and female in the reproductive process determines largely the

¹ *Op. cit.*, p. 111.

² *Why We Behave Like Human Beings*, pp. 430-431.

character of both mechanism and response. The function of the male is that of fertilization and with the procreative act, biologically, his interest ceases, while that of the female is gestation and motherhood of which the incident of fertilization is but the beginning. To meet these diverse requirements there is a corresponding physiological difference in metabolism; the male is essentially kalabolic, that is, tends to expend energy, while the female is anabolic, that is, tends to conserve energy. By consequence, the male characteristically develops secondary sex characters. In his love-making he usually seeks the female; is restless, roving, active, aggressive, dynamic, self-assertive, quick in response, and with no mingled sense of paternity. His sexual impulses are more direct, highly localized, and relatively constant. The female, by contrast, awaits her suitor and must be wooed. She is, generally speaking, coy, reserved, sedentary, passive, reluctant until aroused, slower in reaction, and suffused with the biological implications of maternity. Her sex impulses are more indirect and diffused owing to the more widespread and diversified character of the erogenous zones, and is marked by periodicity.

While these differences have been stated in terms of the physiological and biological qualities of maleness and femaleness in the procreative process in general, it is apparent that they apply to humankind as they do to other animals. It is further obvious that intrinsically they are of greater consequence in human marriage than in animal matings because of its closer intimacies, its lifelong expectation, and its institutional character. And still further, it is because of the transition of marriage from its coercive nature in the past to its present voluntary basis and to the increasing importance of the larger physiological and psychological aspects of sex relations, that adequate sex adjustments become a vital factor in marriage permanency.

So great are some of these biological differences and so diverse are the attendant reactions that Mr. Walter Heape

has developed, with a considerable degree of cogency, a theory of sex antagonism between the sexes as the explanation of numerous social phenomena both past and present.¹ There is, however, a reconciling quality to love in its "coming of age" which offsets other organic tendencies, of which much has been said in previous discussions, and which under present conditions is assuming large proportions. This is due in the main to the modern interest in sex dissociated from procreation, and to the new appreciation of sex functioning in its relation to marital happiness.

As marriage passes more and more into the category of voluntary human relations it becomes increasingly essential that husbands and wives must retain their affection for each other if their marriage is to endure, and this can hardly be done except by means similar to those employed to fan the spark of love into the flame which welded their lives together in the marriage bond. The nuptial ceremony no longer closes the door against the necessity of maintaining mutually agreeable behavior. Reciprocal sex attraction always plays a dominant rôle in normal mating, but because sex interests have been thrown so significantly into the foreground of consciousness there is no evading the fact that agreeable sex adjustments in marriage assume a new importance in marital experience. This requires knowledge and technique.

As a result of this enforced realization a whole new literature embracing thousands of titles has grown up recently on "The Art of Love."² As might have been expected the subject has been exploited for revenue. Some of it is fawningly sentimental, not a little of it, particularly

¹ Cf. *Sex Antagonism*.

² Cf. DR. MARIE STOPES, *Married Love*; WILLIAM J. FIELDING, *Sex and the Love Life*; HAVELOCK ELLIS, *Studies in the Psychology of Sex*, and *Sex in Relation to Society*; CALVERTON and SCHMALHAUSEN, *Sex in Civilization*; DR. H. W. LONG, *Same Sex Life and Same Sex Living*; DR. G. C. BEALE, *Wise Wedlock*; EDWARD CARPENTER, *Love's Coming of Age*.

in fiction, is a masked appeal to the morbid, some of it is based on pure animalism, but this should not blind us to the fact that much of it is motivated by a sincere desire on the part of many conscientious physicians, psychiatrists, psychoanalysts, and other competent persons, to render a real and valuable service to men and women who seek enlightenment on a long tabooed subject which is known today, better than at any previous time, to lie at the base of much needless marital unhappiness and distress.

Havelock Ellis writes: "In the great majority of marriages success depends exclusively upon the knowledge of the art of love possessed by the two persons who enter into it. A life long monogamic union may, indeed, persist in the absence of the slightest inborn or acquired art of love, out of religious resignation or sheer stupidity. But that attitude is now becoming less common."¹

No one knows how many otherwise successful marriages have been wrecked by husbands who make "demands" upon their wives in violence of woman's sexual nature. Perhaps a woman physician is best able to state the case. Thus Dr. Marie C. Stopes, an English advocate of sex enlightenment says: "It should be realized that a man does not woo and win a woman once for all when he marries her. *He must woo her before every separate act of coitus; for each act corresponds to a marriage as other creatures know it.*"²

"Man through prudery, through the custom of ignoring woman's side of marriage, and considering his own whim as the marriage law has largely lost the art of stirring a chaste partner to physical love. He, therefore, deprives her of a glamour, the loss of which he deplures, for he feels a lack not only of romance and beauty, but of something higher which is mystically given as the result of the complete union. He blames his wife's 'coldness' instead

¹ *Studies in the Psychology of Sex*, Vol. 6, p. 511.

² *Op. cit.*, p. 64.

of his own want of art. Then (sometimes) he seeks elsewhere for the things she would have given him had he known how to win them. And she, knowing that the shrine has been desecrated, is filled with righteous indignation, though generally as blind as he to the true cause of what has occurred."¹

Commenting on this situation Mr. Fielding says: "Too much stress cannot be laid upon this important point. Lack of attention to this principle, which may be dignified by the term *law of nature*—as it is universal throughout nature—has been the cause of unsatisfactory sexual relations in countless marriages.

"Furthermore, the dissatisfaction engendered by sexual disharmony from this source leads to various other complications. As a result of unsatisfactory sexual relations in marriage, the partners become quarrelsome, embittered, and nerve-racked. Neurasthenia is not an unusual result. These are among the more ordinary results that never reach the point of conspicuous public notice.

"How many cases of infidelity, separation and divorce are due primarily to this cause it is impossible to say. And while the trouble is so often blamed on the 'coldness' of the woman, in the great majority of cases it is due to the lack of insight and understanding on the part of the husband. He has never learned the physiology and psychology of love, and consequently he has never been able to practise in anything like its complete sense the art of love in marriage.

"The husband suffers from his own short-comings, and becomes dissatisfied, often embittered. His wife physically unsatisfied, and spiritually dissatisfied, is equally at sea, and baffled by a situation which for her has no solution. The solution lies in his hands, if he but knew the way."²

¹ *Ibid.*, pp. 145-146.

² *Op. cit.*, pp. 117-118.

Upon "keeping the romance in marriage," Mr. Fielding further says: "It cannot be too strongly emphasized that the key to marital happiness is to continue courtship throughout life. Happiness in marriage can exist only on a foundation of love, and love must be fostered and attended, and not taken for granted. There is every reason why the romance and beauty of courtship should be continued after marriage. A large proportion of the marriages that have been unable to survive the stormy and treacherous reefs of sexual ignorance, could if the couple had had an understanding of the psychology behind love, have kept the flame of love burning. Tact and consideration are qualities that mean much in the duration of love. The fiery, impulsive, impetuous lover is often a selfish, vain, egotistical lover, and the passion soon turns to ashes in the wake of his hectic course."¹

Sexual Incompatibility

Almost universally throughout civilization and among many preliterate peoples extra-marital sexual practices have been deemed sufficient cause for the dissolution of marriage if not for divorce. In the United States adultery is a ground for divorce in every State (except South Carolina which grants no divorces) and in the District of Columbia. From what has been brought out in preceding sections of this chapter it is apparent that sexual incompatibility within marriage under present conditions is coming to be a factor, if it has not already become so, of rival or even of superior importance. Divorces, of course, are not obtained directly for this reason because the law nowhere recognizes it as a "legal ground." But everybody knows that the grounds upon which divorces are sought frequently are not the real causes for the action. Regardless of what the statutes are, persons whose marital relations

¹ *Ibid.*, pp. 128-129.

have broken down, have found ultimately a way of release from them. A distinguished member of the bar, Mr. Arthur Garfield Hays, who has had wide experience in the divorce courts has this to say: "Most rationalists will agree that while marriage may not always be successful if sex relations are satisfactory, yet it will certainly be a failure if they are not . . . No doubt the psychologist or psychoanalyst will find the root of most marital troubles in the sex factor as between the husband and wife. Yet this is never the alleged ground for divorce. If it is the real ground, it is sought to be covered as a phase of incompatibility or as related to cruelty, or is included in one of the recognized legal categories. Inquiry into the love life would be far more rational than the usual investigation of the hate life . . .

"It will be seen that legislators avoid the direct question of sexual relations between husband and wife. Yet laws are framed and interpreted, at least in the more liberal states, so that mismatched couples are able to come within their terms . . . The law does not specifically provide for divorce on the ground of incompatibility; certainly not on the ground of sexual dissatisfaction. Yet extreme cruelty covers a host of dissatisfactions . . . Incompatibility or cruelty is proved by what the parties have done and said, usually in the presence of a witness. The maid may testify that the husband threw the 'God Bless our Home' sign at his wife. The psychologist, psychoanalyst or wise judge knows that the indignity was the effect rather than the cause. The law quixotically endeavors to find fault or blame and renders judgments accordingly."¹

It is probably true also that there is often no clear realization on the part of husbands and wives themselves of the real origin of their marital disharmony because of their ignorance of the nature of physiological sex func-

¹ *The Sexual Factor in Divorce*, in CALVERTON and SCHMALHAUSEN, *op. cit.*, pp. 221-224.

tioning and their mental conditioning in regard to it, or because of their inability accurately to diagnose their psychological reactions. Thus Prof. Mowrer says: "The sex factor is probably more commonly the cause of family discord than would appear on the surface. People are not accustomed to talk frankly about sex. Even between husband and wife there is often a decided reserve in any discussion in this sphere of their relations. It is doubtful if the average husband and wife themselves realize the importance of sexual adjustment in promoting harmonious adjustment in other relations."¹

The causes which lead to sexual incompatibility are many and varied. Professor Mowrer includes in the list such factors as: differences in sex impulses and emotions, in temperament, and in culture traits; ill health, repugnance toward sex relations, puritanical attitudes; differences in desires for direct and indirect response; fear of pregnancy; refusal of relations; jealousy.² There are doubtless many others and there are in addition many latent as well as overt influences which condition behavior—hidden and obscure factors which lie in the field of the subconscious. The more we learn about psychoanalysis the more we realize the force of these elusive or forgotten springs of conduct which escape our notice or which do not come into the field of consciousness at all.

It is probable, therefore, that sexual maladjustments within marriage with the accompanying tensions is a large factor in conjugal incompatibility which is coming to be a far greater factor in divorce than ever has existed before. Had former external controls continued their effectiveness this situation could not have developed, but as matters stand today the case is quite different, and sexual incompatibility must be reckoned with as among the many causes of increasing divorce.

¹ *Family Disorganization*, p. 197.

² *Ibid.*, pp. 198-199.

The Sex Factor in Divorce

Owing to its misunderstood and occult nature the factor of sexual maladjustment in marital disharmony can be measured only with the greatest difficulty. Direct evidence alone would be unreliable. By the use of the psychoanalytic technique, supplementing personal testimony, in the study of a random sampling of a few thousand divorced couples, a fair degree of accuracy could be obtained, but so far no such investigation has been made. There is no possibility, therefore, of determining the proportion of cases in which the sex factor is either the major or an important contributory cause in the failures of wedlock. All that we can do is to rely upon the judgment of those best informed as to its probable frequency. Much the same, of course, could be said in reference to any other factor which we have had under consideration. Even if we could ascertain how often it is a factor in each thousand cases it would still be so intricately interwoven with others as to render a judgment upon its relative importance difficult if not impossible.

The nearest we have to direct scientific information is furnished by Dr. Davis and Dr. Hamilton in their investigations previously referred to. In a small group of 116 unhappily married women whom Dr. Davis asked to give the reasons for their unhappiness, 88 gave one reason, 20 gave two, 2 gave three and 6 did not reply, or 134 reasons in all. Incompatibility of temperament or interests was given 40 times, difficulties of adjustment of sexual life 23 times, economic reasons 14 times, husbands' unfaithfulness 12 times, husbands' alcoholism 10 times, and all others 4 times or fewer. The sexual factor accounts thus for about one-sixth of the total. If, however, it is directly or indirectly a contributing factor in others, as we know it largely to be in temperamental incompatibility and as it always is in the unfaithfulness of husbands, then it appears as of far greater importance than the figures indicate. At any rate Dr. Davis

observes that, "In married life the sex relationship, both in its physical and emotional aspects, indisputably plays the major part."¹

Dr. Hamilton found in his investigation that the primary and strongest single complaint with regard to marital unhappiness among women was over sexual matters while men placed temperamental difficulties first and sexual second.² His general comment is as follows: "There is plenty of friction in married life quite apart from troubles over the purely sexual side. To many people the non-sexual difficulties bulk much larger than those that arise when a man and a woman try to bring into harmony the demands, capacities, habits, prejudices, and antagonisms involved in the intimate sexual adjustment of marriage. Indeed most of the men and women of this research were inclined to look elsewhere for the main source of their troubles. Yet it would take a very prejudiced and a very reckless psychiatrist to say that most married friction doesn't find its source in sexual maladjustment. At any rate, the frictions which arise from other difficulties would be ignored in many, many cases if the sexual relation itself were satisfactory."³

To be sure these citations furnish only indirect proof of the high ratio of the sex factor to other factors in divorce since they were studies of married persons, but it is a fair inference that the ratio would be far higher in those cases where the unhappiness becomes so great as to cause the severance of the nuptial bond.

Several writers already quoted above on closely associated subjects have expressed in addition their views on the relation of the sex factor to divorce.⁴ To these we now add a few others. Mr. Arthur Garfield Hays says: "Few

¹ *Op. cit.*, pp. 38-39.

² *Cf. op. cit.*, pp. 279-280.

³ *Ibid.*, p. 88.

⁴ *Cf. supra* Dr. H. W. LONG, p. 367; Mr. FIELDING, p. 379; PROFESSOR MOWER, p. 382; Mr. HAYS, p. 181; Drs. HAMILTON and DAVIS, p. 384.

would gainsay the conclusion that matters directly associated with sex are usually the basic cause of divorce and although they are not recognized as grounds for divorce, yet in many states the law in its interpretations of general categories, recognizes the sex factor. This is done indirectly by basing judgments upon acts which are readily attributable to sex frustrations."¹

Mr. Ralph de Pomerai states: "The sexual relationship is a comparatively small thing in marriage if it is satisfactory, . . . but a very big thing if it is not all right. In point of fact, moreover, the real underlying cause of most marital unhappiness and divorce is invariably sexual discontent."²

Professor Paul Popenoe is still more specific: "Approaching a little nearer to individual broken homes, it will be found that at the bottom of most of them (some students have said 90 per cent or more) there is the fundamental problem of sexual maladjustment. People who are perfectly adjusted to each other in this respect do not seek separation, either by desertion or divorce. This fact frequently does not transpire in cases of publicity—frequently, indeed, discordant partners themselves do not realize just what the trouble is. But lawyers and judges who hear many divorce petitions know that this is the truth. It is safe to say that sexual maladjustment plays a part in almost every divorce, and that it is the most important factor in a majority, even though not known to be such by the parties concerned."³

These statements represent the concensus of opinion on the subject. While as a matter of evidence they are inconclusive, they are nevertheless, in the absence of statistical proof, the best available source of information upon which to base a judgment which we at present possess, and the

¹ In CALVERTON and SCHMALHAUSEN, *op. cit.*, p. 230.

² *Marriage*, p. 226.

³ *The Conservation of the Family*, pp. 79-80.

reader is left to make his own appraisal of their validity. This much it seems fairly safe to assert: the sex factor as a cause for divorce has not adequately been diagnosed; it is of far greater significance now than formerly; that no attempt to explain the phenomena of divorce can be satisfactory or complete which does not take it seriously into account.

The Ultra Sex Obsession of the Present

Nothing that has been said in preceding sections of this chapter concerning the "sex revolution" of the present should be construed as an uncritical sanction of its superemphasis upon certain aspects of the sex problem in marriage or of its ultra-radical character in general. We have endeavored simply to explain it in those aspects which bear directly upon our subject and to ascertain its effects. There are fads and crazes in ideas as in everything else. To some persons this subject has become a veritable obsession. There are extremists here as elsewhere. Overstatement and exaggeration doubtless has resulted in distortion. There is a propensity among the uninitiated to mistake the discovery of a phenomenon for its origin and to get excited about it. Sex is an old subject—as old as the race and it will be with us as long as we remain human. To be sure it has assumed a new and larger importance of late and this calls for sane and candid consideration but sex expression is not the chief end of human existence even if it is its beginning.

The sex factor is not exaggerated, however, when because of its importance in relation to individual and social well-being it is made the subject of intelligent study and of clinical investigation. The times call for that. But when it is made a fetish and it is stressed beyond its due proportion in relation to the larger interests of life, as some have done, there is created a situation fraught with dire consequences to the very well-being it is intended to conserve.

There is reason to believe that the influence of the sex factor in relation to present marital instability has not been overrated, but this is different from saying that an overemphasis upon sex may not largely be responsible for that influence. We have tried to describe the situation as it is; not what it should be or what under other circumstances it may become.

It is quite possible, and indeed probable, that, with a more enlightened understanding of the subject, achieved largely as a result of the present perturbation, a better adjustment of the sexual relations in marriage will be secured. By this means sexual experience may become a help and not a hindrance as at present in the stabilizing of marriage. In which case, and to that extent, the agitation over the matter will tend to subside.

Numerous students of the subject have discerned already signs of reaction against the sex frenzy of the present. Professor Hornell Hart says: "The testimony of writers who have themselves been leaders in the movement for sexual liberty seems emphatic; the rebellion is failing in proportion as it succeeds. Mere freedom is bitterly disappointing as a road to richness of life. Disillusionment, not fulfillment of personality, is the typical outcome of the mere casting off of repressions and taboos."¹

Even "flaming youth" in the midst of its heyday begins to show signs of "cooling off." In an article (typical of many now appearing) entitled "Farewell to Sophistication," Professor La Mar Warrick describes the reaction due to disillusionment. Speaking of the attitude of university seniors she says: "Superficially observed, they are a part of the modern pattern. Actually, they are vigorously determined to weave a counter pattern of their own . . .

"Yesterday's youth, disgusted with traditional morality, traditional religion, traditional standards of beauty, threw the whole lot overboard. Today's youth, disgusted

¹ "Fulfillment in Family Life," *Survey Graphic*, Aug. 1, 1930, p. 382.

both with traditional standards and with the chaotic results which have been achieved by throwing overboard these standards, is looking for a *re*-statement of morality, of religion, of beauty, of love."¹

Mrs. Beatrice Forbes-Robertson Hale, a distinguished and avowed champion of feminism, believes strongly that "in spite of the present tumult and shouting" and "amid all this ferment" the "cross current is perceptible"; that as women are becoming better adjusted to their new environment of freedom and as their energies are deflected into "the fields of intellect, affairs, and sport" they already are exhibiting less "preoccupation with sex"; and that "partly as a reaction from the sex-ramp of the present, but more at the call of ever-elaborating cultural interests" there is developing an attitude "toward a mated life based upon economic and mental partnership rather than on physical attraction and emotional love."²

The future alone can determine whether these judgments are based upon correct insight into present trends or are merely the result of pious hopes. Whatever happens it is safe to predict that we are not headed for chaos nor shall we return to the old order. Professor Hart wisely observes: "There is plenty of discussion of the problem, but in the clamor two sets of advocates who speak loudest are both disqualified because their thinking on the subject is patently wishful instead of scientific. The first group is made up of the people who are dogmatically committed to the establishment of puritanical monogamy. Equally biased are the recommendations of another group of agitators, who themselves rebelling against sexual restraints, offer rationalizings of their own cravings, without daring or being able to examine dispassionately the results of the behavior which they advocate."³

¹ *Harper's Magazine*, Oct., 1930, pp. 550-551.

² In CALVERTON and SCHMALHAUSEN, *op. cit.*, pp. 80-81.

³ *Op. cit.*, p. 381-382.

Human society has a fortunate propensity of "muddling through" its difficulties and of finding ultimate adjustment by means of the accumulation of experimental knowledge and wisdom. It is likely that we shall steer a course somewhat midway between these extremes, but meanwhile the divorce rate probably will exhibit the continued effects of this experimentation.

CHAPTER SIXTEEN

CONFLICTING BEHAVIOR SITUATIONS AND PROCESSES

MUCH OF WHAT WAS SAID IN THE PREVIOUS CHAPTER IN regard to the disintegration of marriages as the result of sexual maladjustments might with equal propriety be applied to other subjects. Sex may be a big factor or even the biggest factor in the marriage adjustment process. It may be as Professor Mowrer says, "the most stabilizing element as well as potentially the most fertile source of conflict"¹ in modern marriage, but there are many others of great importance which according to the organic method of viewing the total situation may be either cause or effect, or at least an integrated aspect of sexual maladjustment. Moreover there are others which have a status only remotely if at all connected with that complex. Without particular reference to their relative importance or to their relational significance, some of the most conspicuous of these "other factors" are segregated out for consideration here. Furthermore because disintegration from whatever causes or conditions is a process rather than an incident, as the term itself implies, it is desirable to stress this phase in their treatment.

Tensions versus Pressures

Before proceeding further we should endeavor to grasp more fully the reasons for the shifting of emphasis in our present marriage situation from external pressures to internal tensions, that is, *from* the influences which lie outside

¹ *Family Disorganization*, p. 204.

of the individuals in the economic and the psycho-social environment which unconsciously or consciously operate to conform persons in their marital relations to the institutional or corporate type of marriage as established in tradition and law, to those aspects of behavior processes or reactions which induce or intensify conflicts within marriage as a personal relationship and which involve personality traits, habits, or attitudes of the individuals in their mutual adjustment to objects or situations.

We found in our study of the changing concepts of marriage and of sexual maladjustments in the two preceding chapters that personal interests and needs are taking precedence over those which represent traditional group *mores* and standards and this appears equally to be the case in other aspects of the subject. This change has been effected largely by the diminution of the rigidity of former external pressures as we saw in Chapters XI, XII, and XIII. With the weakening of the force or authority of these extrinsic agencies which tended to conform marriages to the orthodox type as an indissoluble bond regardless of their intrinsic character, the permanency of marriage as an institution comes more and more to depend upon the internal coherency and self-perpetuating quality of individual marriages. The situation thus created has served as a pictorial background which throws into bold relief the significance of the attitudes and reactions of persons within the domain of the immanent relationships of marriage.

It is not to be assumed, however, that increase of tensions necessarily follows the relaxation of pressures, or that the effects would be the same in all cases. There are several possibilities which should be noted:

First, while it is true that there are in every marriage certain factors which tend toward conflict, they may be reconciled or sublimated so completely through conscious effort or through other harmonizing influences that they never upset the equilibrium of the relation. External

pressures therefore are not a condition of their permanency. There are vastly more happy and successful marriages which are voluntarily coherent and self-reliant than often is assumed in view of the publicity attached to divorce. These are not dependent upon institutional reinforcement. They would persist no matter how "free and easy" divorce became. This is the case in those countries where divorces may be obtained by "mutual consent," without "grounds," or merely upon "registration." Dr. Hamilton asked this "arresting and engaging" question of the husbands and wives in his penetrating investigation: "If by some miracle you could press a button and find that you had never been married to your wife (or husband) would you press that button?"¹ Eighty-three per cent of the men and 84 per cent of the women answered that they would not. When asked if they would end their present marriages by this same process if they could, the corresponding percentages were 66 and 64 respectively.²

In all these instances the decrease or even the entire removal of external supports would have no effect.

Second, there are multitudinous instances in which causes of tension exist where little or no personal effort is made to adjust the difficulties which arise, so that the breach widens until it results in complete estrangement, because of reliance upon the law or other extraneous pressures to do what thoughtful consideration might easily have accomplished. In other words, it may prove easier for many married partners to reconcile their divergent traits and interests when thrown upon their own inner and voluntary resources than when dependence is placed upon outer controls. In all such cases the relaxation of external pressures would tend to be followed by diminishing tensions.

Third, there are many husbands and wives who live in a perpetual state of repressed hostility toward each

¹ HAMILTON and MACGOWAN, *What Is Wrong with Marriage*, p. 62.

² *Ibid.*, pp. 63, 279.

other—a sort of endurance contest—because of economic necessity, or because they fear to face community disapproval or religious censure, the loss of social prestige, professional standing, or other serious consequences attendant upon the open rupture of their marital relations. In other cases there are latent and perhaps unperceived causes of friction which, like wild beasts subdued in their cages, only await release to manifest their destructive tendencies. Here the decline or the removal of these inhibiting environmental pressures would reveal baneful tensions at once.

Fourth, there are still other cases where tensions do not actually exist or at least are not of such character or extent as to be of any importance whatever, in which the decline of environmental or institutional controls of the old order would occasion the release of individual initiative and spontaneity, as, for example, in the case of the greater freedom of women, or in the greater mobility of social relations generally. In these cases the resultant development of diverse interests or personality traits would introduce causes of tensions which might easily grow to such magnitude as to destroy the union.

That external pressures have been relaxed admits of no argument. What the ultimate results will be, however, no one now may predict with assurance. It is conceivable that they may be good. We believe that in the main they will be good. But for the time being the most conspicuous results seem to be the increase in personal tensions within a growing proportion of marriages and consequently an increase in marriage fragility. We shall consider some of the most outstanding phases of this situation.

Conflicting Interests and Attitudes

One method of viewing the subject is to note the way in which tensions arise and develop out of the collision of

interests and attitudes under a régime of greater individual freedom. We have considered already those which result from changing concepts of marriage and from sexual maladjustments. Since we cannot hope to cover the entire range of items which would make the survey anything like exhaustive, we shall confine our discussion here to a few typical conflicts which result from the removal of external pressures due to economic change, the progress of liberalism, and the revision of ethical and religious views considered in previous chapters.

While the most obvious effects of the Industrial Revolution, as we have seen, were external, in the sense that they freed marriage from the pressure of economic necessity and aided materially in placing it upon a voluntary basis, they made possible at the same time, and for that very reason, the freer play of economic factors within marriages as sources of personal conflict. These tensions in the main arise from diverse interests and attitudes in regard to family finance. Dr. Hamilton reports that a little over 25 per cent of the married persons of his investigation admitted serious conflicts over money matters.¹ From this we may infer that in cases generally, where the difficulties are sufficient to lead to divorce, the percentage would be even higher. It may be true as he suggests, "that friction over money is usually a symptom of something wrong with marriage. It is not necessarily the cause of the trouble."² But the same thing may be said of sex or any number of other factors. Moreover, the statement might be reversed, since tensions which affect any or all other factors in certain cases may find their starting point in friction over money. Only psychoanalytic case studies can reveal which is which. But the fact remains that whether cause or effect they are present in numerous instances as part of the explanation of the process of marriage disintegration.

¹ Cf. HAMILTON and MACGOWAN, *op. cit.*, p. 70.

² *Ibid.*, p. 68.

These focal points of internal conflict are so numerous and diverse that extensive discussion of them is impossible. They include, among many others, such as the following: poverty; financial reverses; stinginess or extravagance; dissatisfaction over amount of income; who spends the family income; budgeting for diverse types of expenditure; installment buying; luxurious expenditures; conspicuous waste; separate incomes; savings; increasing or lowering the standard of living; vocational interests; vocational separation in employment; mobility of employment; wife's employment or earnings; wife's dependence or independence; wife's allowances or joint account; employment of children; ignorance of husband's income; support of relatives.

Thus tensions over any of these items may prove to be the starting point of a process of antagonistic individualization or they may intensify irritation which may have its source in some other factor. That they are fruitful causes of domestic discord is too obvious to need further elaboration.

The progress of liberalism and the democratic movement resulted in the growing perception that the interests and needs of the individual take precedence over those of institutions. This new appraisal of institutional functions released the individual from institutional constraints. It shifted the emphasis from individual conformity and regimentation to individual initiative and self-determination.

Thus Professor Willystine Goodsell writes: "It is not difficult to perceive how such a spirit would react upon the family. Men and women, reared in the tradition that institutions should be progressively changed to render them more responsive to the universal need for happiness and personal development, will not patiently accept the contrary teaching that marriage is a life long union whether it is successful or not. Common sense and regard for personality alike revolt against the theory that the institution of marriage is more sacred than the well-being of those who

have entered into it; that the integrity of the family should be purchased, if necessary, by the misery and stultification of its members."¹

The democratic form of marriage which emerges from these changed conditions requires mutuality of interests and attitudes in place of the old authority-dependence relationship. It becomes a dual autonomy in which bipolar tensions must be synchronized. Each specific marriage must depend for its perpetuity upon the ability of the parties to harmonize, to a satisfactory degree, all the component elements of their marital experiences. If it survives it is not for the reason that it is a "metaphysical entity" theoretically indissoluble but because it is a present actuality in which two persons by a process of adjustment have achieved successfully a "durable state of tension." Thus each marriage, instead of being like all others, is unique, and presents a "peculiar case." Each acquires a particular individuality. Each is a culture pattern *sui generis*.

Because of this situation, the internal adjustment process, through which two discrete personalities are merged, takes the place of conventional external pressures. Herein lies both the hope and the risk of modern marriage and no one knows yet which is the greater. It by no means follows that sympathetic adjustments cannot be made. On the contrary, in an atmosphere of freedom individualization may take the direction either of divergent or parallel development. When once people have learned to use their freedom wisely the chances of favorable outcome may be enhanced. For the present the trend seems to be adverse. There doubtless always will be a wide variety of conditions within marriages over which tensions may develop and the increasing complexity of modern civilization seems destined to add to, rather than to subtract from, their number.

¹ *Problems of the Family*, p. 382.

A few of these, without reference to their relative importance, which formerly did not exist, or were not in evidence, are listed without comment: sex and money (previously discussed); birth control or the size of the family; indulgence of children; education and training of children; matters of family discipline—who shall dominate?—domestic tyranny of either party; family domicile as to place and type; slovenliness or over-punctiliousness in dress or in housekeeping; keeping up appearances; reactions to marriage monotony; the uses of leisure; restlessness of women; women's careers; diverse social ambitions; extra-marital friendships and outside associations; community activities; interference of relatives or relatives-in-law; the Oedipus and other complexes.

Changes in ethical and religious views within recent decades, as we have seen, have tended progressively to transfer emphasis from form to substance, that is, from external support of institutional and impersonal phases of marriage to those of the personal relations within marriages. Moral and religious concepts are, for many modern-minded people, no longer absolute but relative. Moral guidance depends less and less upon the authority of religious creeds and traditional moral codes and more and more upon the "inner light" of individual reason and judgment. This is the new orthodoxy. It tends to unsettle the *mores* and conventionalities. It fosters individualization instead of standardization.

From these causes certain consequences may manifest themselves. In the first place, it follows, since there is no uniform pattern of individual development, that diverse trends may result in widening the breach between husbands and wives, whether the point of departure lies within the persons themselves or in the incidents of their marital experience. Moreover, for those whose moral views and attitudes have come to rest upon their own inner valuations, rather than upon outer sanctions, they become for

such persons matters of individual conscience and no conflicts are so serious as those which involve conscientious convictions. In the next place, it does not follow that with the passing of authoritative external behavior controls everyone will develop internal ones to take their place and a process of demoralization may result.

The effect of this situation, therefore, is further to increase the importance of tensions within marriages—to intensify those which arise over any of the factors of marital adjustment mentioned above, and which need not be repeated here, as well as to create new ones as a result of divergent individualization, the discussion of which is reserved for a later section.

Specific Culture Conflicts

Conspicuous among the many causes of internal tensions which tend toward the disruption of marriages are those which result from the diverse culture traits of husbands and wives. Typical conflict situations arise from differences in race, religion, education, social class, and the like.

There are differences in the rates of divorce among groups of people classified on these bases, but in the main they are due to influences and pressures of diverse environmental character, such as group *mores*, institutional standards, social traditions, or economic conditions, and the stronger these pressures are the greater is the institutional conformity. Thus the rate of divorce is lower in England than in America, in New England than in the Pacific coast States, among Catholics than among Protestants, among the ignorant than among the educated, and among those on the lower, than among those on the higher, economic levels.

It is when two persons characterized by diverse culture traits or complexes of any sort are united in marriage that tensions as a result of these differences arise in the process

of marriage adjustment and tend to increase the social distance between them.

No adequate statistical studies have been made, so far as we are aware, of comparative divorce rates in mixed marriages and in others on the basis of any of these culture differences, so that the importance attached to them cannot be stated with any degree of precision. This need not deter us, however, without reference to their relative importance, from pointing out the nature of the conflict situations which develop out of such differences.

In regard to races, conceived in terms of nationality, the general concensus of opinion is that on their biological side there are not sufficient differences to need to be taken into account. In regard to their cultural background, however, the differences may be of very great significance. Miss Lillian Brandt in her study of desertion in New York City found, "that a difference in nationality was more than twice as frequent among the cases of desertion as among the general population of the city where it is most common." This fact, she suggests, "may help to explain the situation."¹

Every student of our foreign population elements has stressed the difficulties of family adjustments to the new environment. When there is added to this the difficulties of adjustment of two individuals possessing diverse culture traits to each other within their own marriage relations, the task is made doubly hard. One does not need to look beyond the differences in marriage and family *mores* among the various nationality groups in respect to the authority and domination of the husband, the status of the wife, the discipline, the education, or the employment of children, standards of living, sexual attitudes, and ethical valuations, and the like, or to consider the different rates at which Americanization in the different groups proceeds,

¹ *Five Hundred and Seventy-four Deserters and Their Families*, p. 19.

to discover a wide variety of causes, from any one of which serious tensions may develop.

Differences in religion may be regarded as another source of marital tensions. Only the wide differences as among Catholics, Protestants, and Jews, ordinarily are considered. How much less stable intermarriages among these groups are than those within the groups we do not know, but the impression among students is that they are much less so. It is difficult to isolate the factor of religion from nationality or from the larger culture pattern of which usually it is a part. This is true when comparisons are made of the rates of divorce among Catholics, Protestants, and Jews as distinct culture groups; it is even more so when mixed marriages are considered.

It is probable that within mixed marriages among the various denominations of Protestantism, the decreasing importance attaching to doctrinal beliefs has tended likewise to decrease the sources of conflict over such matters, and even somewhat to lessen tensions where the divergence in creeds is more radical as among the groups mentioned. This is offset very largely, however, so far as the total result is concerned, by the increase in the number of intermarriages between persons of different faiths—a cause of deep concern particularly among Jews and Catholics, where such marriages are discouraged. It is from these diverse attitudes and from the influences growing out of them that we discover a part at least of the greater tendencies for conflicts to develop within such mixed marriages. There are institutional and group pressures exerted upon individuals of different faiths to conform their behavior to the marriage and family concepts and patterns of the sects to which they belong regardless of the diverse views or attitudes of their marriage mates of other faiths. This external reinforcement of individual inclinations and beliefs thus tends either to induce or to intensify internal strains.

These tensions arise and develop out of typical attitudes toward the nature of marriage, sexual relations, birth control and the size of families, family discipline, the rearing of children in the faith, the selection of parochial or other schools; as the result of attendance at different places of worship, disrespect for each other's views, efforts to proselyte, misadjustment to uncongenial social circles, and many similar matters.

Disparity in education and in intellectual pursuits as well as cultural interests and accomplishments lead either to accute tensions or to the parting of the ways for many otherwise well-mated persons. The immediate intellectual interests of the mentally alert and of the stupid are hard to reconcile. The dynamic influences of education tend toward the widening of interest zones and toward the individualization of personality while the dull monotony of industrial processes tends equally to the production of stolid and contracted life patterns. Or, again, the variety of intellectual stimuli in professional and public life as compared with the contracted experiences of the domestic housewife create similar contrasts. Dr. Hamilton found that, "Where the husband and wife had an equal amount of formal education, the couples were above the average for happiness. Superior education made those men and women unhappy whose mates did not have it, and made the uneducated mates more than usually content."¹

While there are doubtless many acute conflict situations which arise because of the keener intellectual sensitiveness of the educated, the chief difficulties appear to be due to the cumulative process of alienation explainable for the reason that one party grows away from the other until an intolerable state of uncongeniality results.

This may be complicated by other factors of mental ability or other character traits either hereditary or acquired which are bound up with successful achievement.

¹ *Op. cit.*, p. 279.

Instances are numerous in which a man prominent in affairs puts away the wife of his youth who shared the hardships of his early struggles because she has been incapable either from lack of ability or of opportunity to make comparable advancement, or in which a woman has divorced the husband whose devotion to business or whose lack of inclination from whatever cause has disqualified him from meeting the demands of the social status which his very success entailed.

Such results ordinarily are not due to "cold calculation" nor to "sheer human perversity," as so often is asserted, but to the development of tensions or to diverse growth processes, the causes of which lie within the total situation. Society may frown upon such procedures, but if our diagnosis of the causes and processes which lead to the results is correct, the thing about which for the moment we are chiefly concerned, then they are hardly more unfortunate or less inevitable, simply because they are more spectacular, than the disruption of marriages for many other reasons already considered.

Despite our democratic professions there are class distinctions among us which constitute socio-economic levels which are quite as definite as those of race, of religion, or of education, and inter-class marriages in this realm often are beset with difficulties greater than those in any of the others. There are differences in etiquette, in refinement of manners, in tastes and attitudes, and in behavior patterns generally of such wide variance as to amount to social barriers which only with the greatest difficulty can be crossed.

Under the blinding thrill of romance these distinctions may be ignored. Crudities even may seem "quaint" to ardent lovers but they soon "get on the nerves" of the more cultivated person when they have to be "lived with." Therefore, when the millionaire marries his stenographer or when the millionaire's daughter elopes with the chauff-

feur there is, more often than otherwise, trouble ahead. "King Cophetua may love his Begger Maid dearly, but there will undoubtedly come a time when he will blush for her manners and chafe under her social *gaucheries*, and this will place a very considerable strain upon his affection."¹ The "dainty daughter of fortune" may resolve to forego her accustomed manner of life and may choose "love in a cottage" only to find presently, as the glamour of romance wanes, that love in a cottage may be far easier to maintain for those on the "cottage level" than for one who has been reared in the "lap of luxury."

Moreover, neither social class looks with complacency upon the invasion of their circle by the "rank outsider" who is likely to be a social misfit in the unaccustomed surroundings and who often is made to feel the group disapproval thus adding to the difficulty of individual adjustment, that of the social as well.

Pathological Factors and Conditions

Health and happiness sustain a causal relationship to each other in human experience generally and marriages furnish no exception to this rule. Dr. Davis investigated this subject, among others, and found that "stability of health" was approximately 13 per cent less in the unhappy group as compared with the happy and concludes that "this is a difference large enough to be significant."²

Here, then, we have another source of tensions within marriages resulting from pathological conditions both physical and mental. In making this statement we are not unmindful of the fact that in innumerable instances the illness of either the husband or the wife is the very means of calling forth on the part of the other, the tenderest manifestations of affection and devotion. There are, how-

¹ DE POMERAI, *Marriage*, p. 236.

² *Factors in the Sex Life of Twenty-two Hundred Women*, pp. 45-46.

ever, numerous effects of the reverse order. They exhibit the dual aspect of being either indirect or direct. In the former case the causes frequently are obscure or unperceived, and serve chiefly to intensify conflict situations which arise from other sources. In the latter case they involve behavior problems which create tensions as well as aggravate others. For example:

There are numerous *degenerative* diseases like tuberculosis, diabetes, Bright's disease, heart diseases, diseases of the arteries, cancer, and occupational poisoning, which in their incipient stages progressively undermine physical vitality without the patient's being aware of the cause.¹ Until they become acute he does not even consult a physician.

There are many *deficiency* diseases such as beriberi, scurvy, pellagra, rickets and goiter, which in the main are due to some deficiency in diet. These diseases have latent periods in which they are present but not evident, during which general impairment in health results.²

There are focal infections, frequently connected with teeth or tonsils, glandular disturbances of the thyroids, pituitaries, or adrenals, organic defects of the digestive, circulatory or respiratory systems, and fatigue—a physiological process of debilitation due to the accumulation in the blood of toxic poisons from the defective elimination of waste products. Fatigue is particularly important in those cases where wives are compelled to add to their domestic burdens those of industrial employment.

Persons suffering from any of these ailments may be cross, irascible, nervous, exasperating, and "hard to live with," thereby magnifying any existing strains. They may incur the censure of being lazy, worthless, good for nothing, thus creating irritation and disparagement. A shiftless and complaining husband or a wife who "drags around"

¹ Cf. GILLIN, J. L., DITMER, C. G., and COLBERT, R. J., *Social Problems*, pp. 374-375.

² Cf. BOWARD, JAMES S. H., *Problems of Social Well-being*, pp. 306-311.

are not agreeable companions and the misfortune is the greater because the reasons are unsuspected or unknown.

Then there are the venereal diseases—gonorrhea and syphilis. It is now known, of course, that they may be contracted in numerous ways from infected persons "innocently," that is, without sexual contact. For this reason they may be unsuspected and may produce all the deteriorating effects of any other degenerative disease before being detected. The ravages of these diseases are bad enough, entailing misery, serious female disorders, barrenness, and other physical and mental consequences, but there probably is no surer means of killing affection and of insuring marital disaster than when the young wife becomes aware of the fact that she has been infected by a husband who previously has contracted the disease by patronizing prostitutes, who has perhaps, despite the advice of the physician, kept the matter secret and has refused to delay the marriage until cured, or who has acquired it after marriage by such clandestine relations outside of marriage.

In the absence of exact information, it is useless, perhaps, to speculate as to whether or not venereal diseases are on the increase. We simply may know more about them now than formerly. Such knowledge as we have about prostitution, the chief method of their spread, indicates that it is on the decline. Added to this the more extensive use of prophylactic and curative methods and there is good reason to believe that they may become less extensive, at least, in the course of time. But they are prevalent enough at the present to constitute a source of disastrous tensions in numerous marriages.

In respect to mental deficiency and mental diseases there are similar difficulties.

Feeble-mindedness or low-grade intelligence is closely associated with social inadequacy. Perhaps the importance of this problem may have been exaggerated somewhat. Not all the feeble-minded are social misfits. Very many

such persons, as Dr. Stanley P. Davies remarks, "perform their tasks steadily day in and day out, lead uneventful lives, and live decently and happily in their own limited ways."¹ But their "ways" are "limited" to a relatively narrow range of situations within which they can function successfully. Then there are many others whose deficient mentality is accompanied by temperamental and emotional instability—high-grade morons or border-line cases, not easily recognized as such—who are neither able "to manage their affairs with ordinary prudence" nor to make the normal social adjustments with any satisfactory degree of efficiency. They are queer, inept, foolish, infantile, inconstant, undependable, and irresponsible. What appears to be apathy, dereliction, or even moral depravity, often is nothing more than manifestations of sheer incompetency. It does not require intelligence much above the moron level to visualize the sources and types of tensions within marriages where such persons are involved.

Hopeless insanity, involving prolonged institutional commitment, is a ground for divorce in eleven States. Whether insanity is on the increase we do not know. Many believe that it is. Data are not available, however, on which any sure conclusion can be based. The big increase in the number of patients in state hospitals for mental diseases, from 67,754 in 1890, and 159,096 in 1910, to 264,226 in 1928 is presumed to furnish some evidence, but this may connote nothing more than the fact that better knowledge on the subject has resulted in more cases being so diagnosed, together with increased reliance upon custodial care and more frequent resort to that method of treatment. Moreover, while very few divorces in the United States are granted on this ground the actual number has increased, the figures being 103 in 1924, 86 in 1925, 81 in 1926, 115 in 1927, 142 in 1928, and 136 in 1929. This

¹ Social Control of the Feeble-minded, *The National Committee for Mental Hygiene*, p. 43.

again may reflect only the increase in hospital commitments, with which apparently it hardly has kept pace.

Here, again, as in the case of degenerative physical diseases, we find the main sources of marital tensions, not in complete dementia or in advanced stages of mental breakdown where compassion is evoked and sympathetic care is bestowed, but in the mild or incipient forms connected with behavior situations or processes in which the symptoms are misunderstood and often are interpreted in terms of moral culpability or other character defects. "Mental disorders," says Dr. Charles Campbell, "may be mild, just as physical disorders may be; mental indigestion may be of as many degrees as physical indigestion, and an emotional disturbance may be as mild as an attack of chicken-pox."¹ Dr. Abraham Myerson says: "Today we know that there are far more non-asylum cases of mental disease than there are of those needing asylum care. Not only is this true when we consider only the diseases which are often committed to state hospitals, but it becomes completely incontrovertable when we include in the mental diseases the innumerable cases of character defect, neurasthenia, hysteria, etc. In other words, the problems of mental disease reach into every workshop, school, church, and jail and are part of the problem of such great social phenomena as poverty, crime, social conflict, religion, and prostitution,"² and we should add, divorce.

Professor Bossard says: "Appreciation of the larger aspects of the problem of mental disease and disorder is a recent development, and their existence is being revealed in unexpected places. It is a motley group which we find thus afflicted."³ "It includes," says Dr. Campbell, "respectable bankers peeved with their wives; scrupulous housewives with immaculate and uncomfortable homes;

¹ *A Present-day Conception of Mental Disorders*, p. 16.

² *The Inheritance of Mental Diseases*, pp. 16-17.

³ *Op. cit.*, p. 534.

children with night-terrors and all sorts of wayward reactions; earnest reformers, intellectuals, esthetes; delicate and refined invalids, evasive and tyrannical, with manifold symptoms and transitory dramatic episodes; patients delirious with fever, or reduced by a great variety of organic diseases; patients frozen with melancholy or indulging in an orgy of exuberant activity; patients living in a fantastic world with morbid visions and communications and uncanny influences, in whose universe one sees no coherence or logical structure; patients keenly logical and argumentative, embittered, and seeing around them a hostile world with which they refuse to compromise."¹

Psychiatric clinicians have diagnosed a long list of mental ailments of the type we are considering, which, although they may not result in behavior which we designate as insane, may, nevertheless, be regarded as productive of conduct disorders of serious nature. A few of the most common and important ones are listed below, the more general symptoms of which are *hallucinations* or visionary auditory, visual, or tactile impressions; *delusions* of grandeur or self-depreciation; *illusions* or perverted sense impressions; *obsessions* or uncontrolled and persistent ideas, emotions, or impulses, often in the form of phobias and fears, and a wide variety of similar psychic aberrations; *traumatic psychoses* or psychic derangements due to injury of the brain; *paresis* or syphilitic "softening of the brain"; *alcoholic* or *drug psychoses*, involving deliriums and confused hallucinatory states; *manic-depressive psychoses* characterized by periodic or alternate states of elation and depression; *melancholia* or prolonged and deep mental depression; *dementia praecox* or early and progressive mental deterioration; *psychoneuroses*, subdivided into *psychasthenia*, due to psychic functional disorders, *neurasthenia*, as a result of neuro-physical disturbances, and *hysteria*, or erratic emotional instability with tendency to freakish manifestations;

¹ *Op. cit.*, pp 25-26.

psychopathic constitutional inferiority, a general condition of unstable intellectual and emotional equipment with subnormal social adjustment capacity.¹

Doubtless many readers will recall some instance of the breakdown of a marriage followed by divorce because of the erratic conduct of a husband or a wife which at the time seemed incomprehensible but which later came to be explained on the ground of some mental affliction on the part of the offending person.

Divergent Individualization

We have referred more than once to the *process of growing or of drifting apart* in the experience of married couples. This *process* now requires further consideration.

It by no means minimizes the importance of the attempt to discover and to bring to attention the concrete sources of marital tensions in specific conflict situations such as those described in this and in the two preceding chapters, if we now take a sort of cross-section view which is but another way of surveying the subject and of obtaining a more comprehensive understanding of the situation as a whole.

From the point of view of the organic or functional method of interpretation, which, as previously noted, is an attempt to visualize the total situation, these specific "causes" of marital conflicts may be, in reality, little more than incidents in a general process of deterioration which has some other origin. They may, indeed, be regarded as results of the process itself rather than causes, that is, they may be but episodes in a process that is well under way and but for which they would not have occasioned conflicts at all.

Marriage is an internal adjustment process which always is tending either toward the establishment of "a more

¹ For more extensive discussion cf. BOSSARD, *op. cit.*, pp. 535-549.

perfect union" through the coördination, organization, and integration of personal relationships, or toward the disruption of the union through discordancy, disorganization, and disintegration of these relationships. The former trend is by far the more characteristic of marriage experience, just as health predominates over disease, but we conceive it to be the function of a book on marriage to treat these more cheerful and agreeable phases of the subject. Our problem in a book on divorce is to treat the latter aspects, that is, to diagnose the pathological symptoms of marital disease which lead to fatal results.

There are tragic experiences, to be sure, which wreck a few marriages outright; there are others less acute which may start a process of disintegration or which may speed up one which already is in existence; but there are still other situations in which the process may not be dependent at all, or only remotely affected, if at all, by such events whether serious or trivial.

Let us examine a little more closely this third possibility, that is, the process of drifting apart as a result of diverse individualization.

At this point it seems desirable to make a distinction between two phases or aspects of individualization as it affects marriage disorganization. In the first place, we have the more general or social phase in which we witness the decomposition of the family group into self-conscious and self-assertive individuals. In the second place, we have the additional and more specific and personal phase in which there is, out of a wide variety of possibilities, an individualization of the distinctive life interests and plans of the individuals themselves.

The wider social process of individualization has gained momentum continuously since the eighteenth century. This has come about, not so much from the conscious demands for personal freedom as from the natural effects of the passing of what Professor W. I. Thomas and Florian

Znaniecki have called "the ordering and forbidding technique"¹ of an authoritative institutional and formal control. This has made the problem of intramarital adjustments more difficult if for no other reason than that now two self-determining individuals must reconcile their personality differences if a mutually agreeable marriage relation is to be achieved. This does not always happen. On the contrary, it frequently transpires that two married persons who are temperamentally and constitutionally incompatible may clash and quarrel over "little or nothing." They simply "get on each other's nerves." These negative attitudes, if unrestrained, tend in time to grow into positive antagonisms which increase the social divergence between them and which correspondingly decrease the number of accordant contacts which entails a further loss of interest in, and regard for, each other. Presently they find insuperable obstacles to agreeable or even to tolerable relationships in factors or conditions which would never disturb the complacency of persons who are naturally congenial. In such instances it may be said that it is the mismating of non-adaptable persons which is the occasion of tensions over any kind of differences or situations which may exist rather than that specific tensions are the causes of their maladaptations.

The sources of behavior divergences in marriages, however, are not wholly nor even chiefly to be found within the inherent personality traits of individuals. Quite the contrary. They are more conspicuously and actually the product of acquired reactions to the conditions of the psycho-social environment, than to the random impulses of the original organic endowment. Only insane persons behave without reference to societal influences and patterns. For purposes of the individualization of life objectives, these learned responses to the wide variety and complexity of stimuli to diverse individual tastes and

¹ *The Polish Peasant in Europe and America*, Vol. I, p. 3.

interests provided by modern civilization, greatly outclass and outnumber those of every other sort. Thus the high degree of freedom enjoyed by both men and women, particularly in America—a condition which we regard as good in itself and the accepted presupposition upon which our democratic institutions rest—has multiplied the possibilities of this secondary type of individualization.

The effect of this situation then has been to transform individuals as the mere “mechanisms of a regimented régime” into personalities with enlarged potentialities of self-determination and of integral personality development. This means, according to Professor Thomas, “the personal schematization of life—making one’s own definition of the situation and determining one’s own behavior norms.”¹

Professor Mowrer elaborates this concept. He says: “There is in the individual a schematization of all his habits which gives to them a consistency and unity. Each individual, more often unconsciously than consciously, works out for himself an outlook upon the whole of life which takes the form of a philosophy. This schematization which may be called his ‘pattern of life’ determines the general attitude or bias with which he will approach any problem. Where there is too great diversity between the patterns of husband and wife there tends to be conflict or tension.”²

The life pattern is but an expanded concept of psychological and habit complexes integrated into a larger constellation or whole, and like them is accompanied by varying degrees of emotional tone. It is tied up somewhat intimately, therefore, with temperament, disposition, and other character traits, and is influenced deeply by them. Thus a pattern may be strong or weak, broad or narrow, closely knit or loosely formed, adhered to rigidly or help

¹ *The Unadjusted Girl*, p. 86.

² *Op. cit.*, pp. 110–111.

subject to modification. As a bent to conduct it may range all the way from slight predisposition to fixed obsession.

All life patterns possess histories and exhibit growth processes. They may originate early in life and by the time of marriage may be so strongly developed as to render adjustment to one of different character extremely difficult—a condition often found among persons who marry late in life when behavior patterns are mature and rigid. They may exhibit divergent trends as the result of the initial stages of marriage adjustment in which latent patterns are discovered almost immediately, or again they may evolve slowly out of the later experiences of married life. They may remain dormant until certain age periods have been reached, or until certain crises such as religious conversion, the death of a near relative, or the inheritance or the loss of a fortune, or what not, may bring them to light.

Moreover the very term "pattern" implies the organization of ideomotor and behavior reactions around some specific attitude or interest. It is very difficult and sometimes impossible to isolate life patterns from such type factors as concepts of marriage, sex attitudes, standards of living, racial backgrounds, religious beliefs, occupational or professional interests, rural or urban habits of life, and a host of others of similar character. There is, however, this significant difference. In the schematization of life some one interest or outlook becomes central and dominant in the life of the individual, and the more intense this concentration becomes the more likely are tensions to arise and to increase over any other issues which do not harmonize with the life scheme. Instead of random behavior, then, we have sequences which are more or less organized into a definite trend, and tensions appear, not as detached and sporadic episodes but as events which have definite relation to the integral process.

Besides, this schematization of life into distinct and divergent patterns often is progressive in that it feeds upon

opposition which in turn stimulates self-assertion and grows toward fixity of type, thereby making it more difficult for two persons with dissimilar patterns to reconcile their points of disagreement and their conflicting attitudes and interests, thus increasing the likelihood of their drifting farther and farther apart.

A few observations may now be made in summary of this division of our study.

We face a situation in present civilization which is essentially new so far as the history of marriage and divorce are concerned, the two outstanding aspects of which are the unparalleled freedom of the individual and the bewildering complexity of social conditions. In order that individuals may be able to function adequately within this situation in the interests both of their own, and of the social well-being, there is required a high degree of insight and of self-discipline and an ability to make the necessary adjustments. In numerous instances this has not been attained. But it is not alone in marriage that these perplexing problems of personal adaptation are to be found. They are manifest in every other sphere of human relations—in the economic, the political, the legal, the moral, the religious, and the international.

It is this situation in respect to divorce that we have endeavored to analyze. We have found that with the diminution of the external pressures which institutionalized marriages according to a definite pattern, their perpetuity comes increasingly to depend upon their internal coherency, that is, upon the personal inclinations of those who compose them. This means that while marriage as an institution, resting as it does upon basic human needs, is as secure as ever, it is becoming more elastic and adaptable to changing conditions, and is undergoing certain modifications. The durability of individual marriages is determined now, to a very large degree, by the success or failure of the

voluntary process of coadaptation. Within this process the chief causes of marital dissolution are to be found in the tensions which develop between husbands and wives as the result of a wide diversity and complexity of conflict situations. These cannot be resolved into specific categories of detached and isolated factors. Those who expect such a naive factorizing of the causes of divorce doubtless will be disappointed with our analysis. Each case of marital discord is unique and is an integrated product of the numerous elements we have considered, in various degrees and combinations.

What we have sought to show, as the conclusion of the whole survey, is that divorces are the end results of the dissolution of marriages, the explanation of which lies within the nature of modern civilization and that for the past few decades the totality of the combined influences have been of such character as to produce an increasing number of such marriage failures and a consequent rise in the divorce rate.

PART III
Conclusions

CHAPTER SEVENTEEN

PROBABLE OUTCOME

Will Marriage Survive?

THE MAIN PURPOSE OF THIS STUDY IS ACHIEVED IN THE explanation of divorce as a social phenomenon and in the interpretation of the trend of the divorce rate in terms of changing conditions during the period under investigation.

A good many persons, however, who read the preceding chapters doubtless will ask: Will marriage survive? Do present conditions indicate, as so many gloomy prophets predict, that marriage is "on the skids" and that the institution is facing social "bankruptcy"? Is marriage an anachronistic institution which has outlived its usefulness under the changed conditions of modern civilization, and does the rising divorce rate reveal its progressive breakdown?

He would be a bold prophet indeed who would venture to give a categorical answer to these questions. They are not the type of questions to which an unequivocal answer of yes or no can be given. This does not deter us, however, from seeking such information as may throw light upon the subject nor from making such observations as a study of the facts and conditions seem to us to warrant.

It will be recalled that, at the outset, we made a distinction between marriage as an institution and marriage as a personal relationship. Now it is in the domain of the latter, facilitated by the relaxation of certain environmental pressures, that disintegration has proceeded so inexorably. But what effect, we may ask, has this had upon

the stability of the institution, or upon the propensity of people to marry and to live in the married state? It is quite possible that divorce may register an increasing number of these broken personal relationships without jeopardizing ultimately the permanency of the institution itself. A little analysis here may aid in making this clear.

Social institutions, at any time, are the embodiment of the prevailing *mores* of the group, in respect to those aspects of human life of which they are the formal expression. The four great primary institutions, according to Professor Carl Kelsey, are the economic, the political, the domestic, and the religious. They are based upon the major interests of self-preservation, of group-preservation, of race-preservation, and of soul-preservation.¹ These are found "among all peoples and everywhere." As long as these interests or needs persist there seems to be no question of the permanency of the institutions which are based upon them. It does not follow, however, that these needs persist in unmodified form. They change in the modes of their expression from time to time and this requires institutional modification as well. But, owing to their character, and to the inertia of social traditions, institutions tend to resist change. "In many ways," says Professor Kelsey, "the crystallization of institutions is the most serious problem in their careers. It is so much easier to follow old methods than to experiment with new that man drifts along hiding the facts from himself until some social revolution seems to break down the very foundations of his society."² Thus institutions do not change through any inner self-determined process of their own; they are not personal entities with active powers of choice and self-direction. They are merely organized group habits or ways of doing things. Once established through the accumulation of group experience they tend to remain static through

¹ *The Physical Basis of Society*, p. 439.

² *Ibid.*, p. 446.

sheer conformity. They undergo modification only through the impact of pressures which results from changes in the underlying conditions of the phenomena of which they are the instrument of standardization and of control. Hence there is always a lag between the institution and the changed nature of the facts of experience. This may be visualized in either of two ways. To the institutionally-minded it is seen in terms of the deviation of these manifestations from the institutional type. To the realist it means that the institution is maladjusted to the changed conditions. Unless these changes are revolutionary they do not seem even to threaten the existing order but simply bring about, in time, the necessary and corresponding changes in the institution. Even in case of revolution there is merely the substitution of one form for another, and the institution itself continues.

In the perspective of history all these basic institutions again and again have been remolded to the changing character of human needs among diverse peoples, and under varying conditions of life, without there being any indication or threat of their elimination.

People always will find ways of meeting existing needs group-wise, and these collective ways *are* their social institutions at the time. This is why changes in the processes of production and in the forms of government have not destroyed our economic and political institutions. Religious views and beliefs likewise have changed, and creeds have been revised from time to time, but religionists probably would be the last persons in the world to admit that this has sounded the death knell of religious institutions.

Why, then, should anyone assume or predict, simply because changed ideas, attitudes, and conditions have resulted in the destruction of more marriages now than formerly, that marriage is doomed and that the institution is on the way to extinction? Here as elsewhere, but perhaps

not more so, the institution is out of joint with the times. The old "ways" of marriage, representing in large degree the survival of the medieval type, are no longer adaptable in many respects to the changed concepts and conditions of modern life.

Only those, then, it would seem, who mistake the confusion incident to institutional readaptation, that is, to the evolving of better ways of meeting the situation, as signs of the breakdown of social order, can prophesy the collapse of the marriage institution.

It now may be pertinent to inquire what the actual situation in the United States is in regard to the marital condition of the population and to ascertain what it shows with regard to the perpetuity of marriage as an institution.

Before we examine the figures we should get rid of a very widespread and falsely exaggerated impression which is created by the often-repeated assertion that the ratio of divorces to marriages is now one to six. This statement itself is correct, but the inference drawn from it by many persons, is erroneous. There were 201,468 divorces granted and there were 1,232,559 marriages performed during the year 1929, but this is not equivalent to saying that one-sixth of these marriages were dissolved by divorce during that year, that the expectation of the dissolution by divorce of all marriages is one-sixth per year, or that all marriages will terminate in divorce within six years. Far from it. All the figures tell us is that while 1,232,559 new or remarriages were added in the year 1929 to the total number of all existing marriages, 201,475 of this grand total were dissolved by divorce during the same year.

Fortunately, for the purpose of obtaining the ratio between divorces and the total number of existing marriages from which they are derived the Census Bureau has estimated, by means of approved statistical methods, both the population and the number of persons married in the population for each year between the decennial census

years. While these estimates concededly lack the accuracy of actual enumerations, it is unlikely, as is proved by experience where checking up has been possible, that they involve a variation of more than 5 per cent from the actual data, and hence are useful for making a rough comparison between years and decades.

In 1929 the number of persons married is estimated at 49,721,508,¹ representing approximately, if not accurately, one-half that number of marriages, or 24,860,754, existing in that year. Of this number 201,475 were dissolved by divorce or 1 to 124. The corresponding figures, computed in the same way, for 1927, were 1 to 126; for 1926, 1 to 132; for 1925, 1 to 134; for 1924, 1 to 134. For the census year 1920, 1 to 127; for 1910, 1 to 215; for 1900, 1 to 249.

Even if this ratio is only approximate, and despite the fact that divorces are gaining in frequency, the situation in regard to the dissolution of existing marriages at the present time is far from being so "alarming" as commonly is supposed.

In the next place, we should inquire into the actual marital status of the population in order to ascertain whether or not marriage is showing any signs of a general decline.

In the facts set forth in Tables XIX and XX, pages 146 and 148 respectively, we noted that from 1890 to 1920, whether compared with the total population or with the unmarried portion of the population fifteen years of age and over, the rate of marriages has shown a decided gain, and only in the five-year period of which 1925 is the median year (Table XIX), does the rate show a tendency to decrease.

This same trend is shown in the census data concerning the percentage of persons in the population returned as married.

¹ *Marriage and Divorce*, Special Report of the Bureau of the Census for 1929, p. 17.

TABLE XXIX.—PERCENTAGE MARRIED OF THE POPULATION FIFTEEN YEARS OF AGE AND OVER¹

Census year	Men	Women
1930	60.0	61.1
1920	59.2	60.6
1910	55.8	58.9
1900	54.5	57.0
1890	53.9	56.8

¹ Population Census, 1920, Vol. II, p. 387. Figures for 1930 from advance release of the Census Bureau, Aug. 31, 1931.

Moreover, the average age at entrance into marriage, contrary to popular impression, is falling. Thus the following table shows that most of the increase in the percentage of the married as revealed in the preceding table has taken place in the earlier age groups.

TABLE XXX.—PERCENTAGE MARRIED BY AGE GROUPS¹

Periods, years	Males			Females		
	1920	1910	1900	1920	1910	1900
15 to 19	2.1	1.1	1.0	12.5	11.3	10.9
20 to 24	28.3	24.0	21.6	52.3	49.7	46.5
25 to 34	65.6	62.8	60.6	76.5	75.1	73.0
35 to 44	82.2	81.3	80.9	80.3	80.1	79.5

¹ Population Census, 1920, pp. 394-395.

What these figures show, then, is that despite the large and increasing number of individual marriage failures and the great publicity given to divorce, and despite the existence of many social changes which for large groups result in the postponement of marriage and in otherwise discouraging persons from venturing upon marriage, on the whole more persons are marrying or remarrying now than formerly in proportion to the population and on the average are entering into the relation at an earlier age.

Perhaps the whole situation may be made a little clearer if we supplement the foregoing analysis by the use of a figurative illustration. Let us think of the total number of marriages existing at any time as a great reservoir into which is pouring a constant stream composed of new marriages and out of which is flowing another stream consisting of marriages which are being broken by death and by divorce. The level of the reservoir at any future time will then be determined by the relative volume of these two streams. If the inflow exceeds the outflow the level will rise; if the reverse, it will fall.

Into this imaginary reservoir then there has been flowing a stream of constantly increasing magnitude sufficient to keep the level rising notwithstanding the increase in that portion of the out-flowing stream which represents marriages that are being broken by divorce. While no statistics are available in regard to that portion of the stream which represents marriages broken by death, the probability is that if there has been any change recently it has been slight, and falling rather than rising, as the result of decreasing mortality.

It is true, of course, that if the outflowing stream should continue to increase faster than the inflowing stream, as it has been doing for some decades, a point would be reached when the change in the level of the reservoir would show the reverse of its present tendency. It is interesting to note in this connection that for the year 1929, the last available data, the increase in marriages over 1928 was 4.2 per cent while the increase in divorces was 2.8 per cent for the same period. This, however, may prove to be but a temporary condition.

What the future may reveal is entirely problematical, but for the present we must conclude on the basis of available data that marriage is gaining somewhat in popularity and is showing no signs of decline.

A Problem of Transition

But even if the institution of marriage does persist, the question still may be asked, will the present confusion in regard to individual marriages continue? No one knows. The divorce rate may continue to rise for some time to come and it may remain high. The present indications are that it will. There are considerations, however, which may throw some light upon the question with regard to future possibilities.

Our effort has been to show that the period of the rapid rise of the divorce rate has been one of correspondingly rapid social change, that is, that the world is moving and that it is moving forward. No one, we think, will question the ultimate advantage to society of progressive achievement in economic prosperity, in enlarged individual freedom, in higher ethical standards, in improved concepts of marriage, in better sexual adjustment, and in larger personality development. These unquestionably will minister to human well-being. They make for the enlargement of life. Consequently the greater the gain the larger the good. The difficulties arise, not so much out of the nature, as from the rapidity of the change. Developments have been so rapid as to create a "culture lag" and to throw institutions out of adjustment in many of their aspects.

This is but to say that we are in a period of rapid transition. One needs almost to apologize for the use of this term. It seems trite and meaningless to many, since change is universal and we are always in transition. But there are periods in history when there is convergence of forces. There have been epochs in which economic, political, and religious changes have been so outstanding as to characterize them as unique, as for example, the Industrial Revolution, the French Revolution, and the Protestant Reformation. A similar situation seems to prevail at the present time in regard to the domestic institution. Indeed

it seems to be the integrated product of all these others. It is highly probable that there never has been a time in the history of marriage when such a combination of radical and far-reaching changes, both material and mental, have pressed so directly upon marriage and the family as that which has taken place during the last half of the 19th Century and first quarter of the 20th, and the end, apparently, is not in sight.

The conditions which have created the instability of individual marriages within the institution, then, are the result of a process, which in its larger aspects, has been described by Professor Simon N. Patten as the transition from the "pain or deficit economy" to the "pleasure or surplus economy." In the former, "the traditions and experiences of men were molded out of the general menaces to life and happiness." In the latter, "improvements in the environment will construct a new basis for civilization by lessening deficit and destroying the old status between men and nature."¹ He continues by way of elaboration: "It is not however to be assumed that the transition to a pleasure economy is an easy one. On the contrary, it is a most difficult process and one fraught with many evils and dangers. So many of the fundamental ideas, ideals, and impulses of the race lose their efficiency through the change, that mankind seems almost without a rudder to guide it through the new difficulties . . . Individuals as well as nations show the deteriorating influence of pleasure as soon as they are freed from the restraints of a pain economy. The tendency, however, is an evil that belongs only to the period of transition. A nation after undergoing the severe discipline of an unfavorable environment, suddenly finds itself transferred to a new environment where there is an abundance of utilities and no fear of enemies. The old safeguards to character are inadequate

¹ *The New Basis of Civilization*, p. 10.

and it takes a long time to construct a new series of safeguards suited to the new conditions."¹

This principle of interpretation is as applicable to institutions as it is to individuals and to nations. The institution of marriage seems to be undergoing just such transition. Many old restraints have been and are still being removed and new ideals are in the process of formation. Before these vanishing restraints have been replaced by internal regulative controls some disintegration is sure to occur, but in the end, a new adjustment will tend to be established and marriages should be much improved by the change. This is but to say that when the causes of maladjustment are not evil in and of themselves, but rather those consequent upon readjustment to improving conditions, the effects are not necessarily permanent. This has been shown to be the case in reference to a large proportion of divorces. It is much as one writer has expressed it: "The whole human family is moving out of an old, worn-out social, economic, and theological house into a new one and family jars are bound to result,"² but when once established in the more agreeable and commodious quarters, domestic life should be happier and more wholesome, and, as a consequence, occasions of tension should tend likewise to diminish. The net result of these modern movements should be to place marriages upon a better basis with larger expectation of their permanency.

If this type of reasoning is sound, therefore, we are not forced to the conclusion that the present trend of the divorce rate is destined inevitably to continue indefinitely. It may sound paradoxical, but it is theoretically possible to say, that the same forces and conditions which have produced the high divorce rate of the present may be the

¹ "Theory of Social Forces," *Annals of the American Academy of Political and Social Science*, January, 1906, pp. 76-77.

² O'Hare, Kate, "Is Divorce a Forward or a Backward Step," *The Arena*, April, 1905, p. 414.

very ones which, through more adequate adjustment, may prove to be the salvation of an increasing number of marriages in the future. This may or may not turn out to be the case.

This interpretation is not put forth as a deliberate scientific prediction but merely as one which possesses a considerable degree of plausibility. We should remind ourselves constantly that society is highly kinetic so that before it becomes adjusted to one set of altered conditions other changes may arise to disturb anew its equilibrium.

Proposed Remedies

Whatever the future outcome in regard to marriage may be the present situation is highly unsatisfactory. This admits of no debate. No one can sit through a few sessions of a divorce court, or a court of domestic relations, without being impressed with the enormous amount of human misery which there is revealed. Far from being a trivial matter, the dissolution of marriages, in an overwhelming proportion of cases, is a tragedy, often worse than death.

Many serious-minded persons, therefore, are asking what can be done to improve the present situation? Proposals, in answer to this question, are numerous and diverse. All of them are equally serious and well intentioned, but in the light of our investigation, they are not equally advantageous. It seems desirable, therefore, to analyze and to evaluate some of the most important of them. For purposes of clearness, and convenience of treatment, they may be classified into four groups: reactionary, conservative, radical, and constructive. We shall consider them in this order.

Reactionary. By this type of effort we mean the negative attitude of resistance to change. It is characterized by attempts to meet and to offset the clearly recognized drift away from the ideals and standards of the past by the reassertion of the validity of the very means which are

losing their efficiency in the control of the situation and by increasing the efforts to reenforce them. This view is promulgated by those who assert that the only cure for the "national evil of divorce" is the return to the patriarchal structure of the family with its authority-obedience relationship between husband and wife and to the theory of the indissolubility of marriage on the ground of its sacramental character and consequently to the prohibition of absolute divorce for any cause.¹

It is argued that "divorce prevents the perfection of marriage," since, unless persons enter into wedlock with the full realization that under no circumstances whatever can the bond be severed, they will fail to put forth every possible effort to reconcile their differences, and, in case the differences are irreconcilable, will not settle down to endure the strain with Christian fortitude. There is some truth in this, but unfortunately it places too great dependence upon the human will, even when supported by the imputed graces of the sacrament, as the chief determining factor in the situation. Moreover, the very opposite result often is manifested, as Montaigne long ago explained, when he said: "We have thought to tie the nuptial knot of our marriage more fast and firm by taking away all means of dissolving it; but the knot of will and affection is so much the more slackened and made loose by how much that constraint is drawn closer."² Furthermore we have found that many of the causes of marital disintegration lie quite outside the domain of human wills, that is, within the social environment, and largely beyond their control.

Again, it is highly improbable, to say the least, that women who have acquired a high degree of economic and social freedom, voluntarily will surrender it for the dubious

¹ Cf. The Encyclical Letter of Pope Pius XI on Christian marriage, also Walter George Smith, "Divorce" *Catholic Encyclopedia*, Vol. V, p. 69.

² *Essays*, Vol. I, p. 66 (ed. by Hazlitt).

advantages of the dependence-relationship from which they struggled long to escape. Many of them are strong in the belief that happiness in marriage has a greater probability of attainment under a regime of freedom than under any form of subordination.

It should be pointed out, furthermore, that these forms of control in marriage were tried out formerly under conditions which were far more favorable to their success than they are at present, and that they did not produce satisfactory results. They are less likely to do so today in an age of waning external authority in all domains of life, however vigorously their claims may be reasserted.

In the next place, suppose such a program were carried out, and laws were enacted in all the States prohibiting absolute divorce, as is the case now in South Carolina, what, in the light of our study, would be the most probable results?

Such laws would need to include the invalidation of all divorces secured in foreign jurisdictions in order to prevent extensive migration for the purpose of obtaining them.

If divorces were stopped, while the causes of marital disintegration which we have discussed were left in operation—and the mere stoppage of divorce would scarcely affect them—marriages would continue to go to pieces as they do now. Legal separations, with all their attendant evils, would increase tremendously. Annulment and other subterfuges would be resorted to extensively. Intra-marital murders doubtless would increase. An enormous number of illegitimate unions naturally would be formed with a great increase in the number of illegitimate children. It would be hard for us to imagine a situation which would be productive of greater moral confusion.

We conclude, then, that it is not only futile, but highly undesirable, to resort to the erection of barriers to stem the present tide of divorce. To attempt to dam the stream without providing a waste-weir is only to compel an over-

flow, and the formation of new, and perhaps destructive channels. The problem is one of constructing new and better channels. Arbitrarily to diminish the number of divorces under existing conditions, to change the figure, would be to employ a remedy more disastrous than the disease.

Conservative. Here we would classify such attempts as are being made to adjust the conditions of present marriages to the basis of the surviving patterns from the *mores* of the past. Some of these are what Professor Mowrer calls the "Pollyana type." They consist chiefly in evangelistic exhortations to be good, to be patient, to be reconciled, to conform to what is expected and proper.

A typical example of this naive treatment is to be found in the "recipe" for the prevention of marital discord proposed by Mr. McGee of New York City, attorney for the Legal Aid Society.

Ten suggestions for men:

1. Be generous according to your means.
2. Do not interfere with a woman in the management of purely domestic affairs.
3. Be cheerful, even though sometimes it may tax you to the utmost.
4. Be considerate.
5. Make love to your wife; continue to be her sweetheart.
6. Do not scold.
7. Establish your home, if possible, remote from your wife's and your own immediate family.
8. Do not keep a lodger.
9. Cultivate neatness and personal cleanliness.
10. Be kind and just to your children.

Ten suggestions for women:

1. Do not be extravagant.
2. Keep your home clean.
3. Do not permit your person to become unattractive.
4. Do not receive attentions from other men.

5. Do not resent reasonable discipline of children by their father.

6. Do not spend too much time with your mother.

7. Do not accept advice from your neighbors or stress too greatly even that of your own family concerning the management of your domestic affairs.

8. Do not disparage your husband.

9. Smile. Be attentive to little things.

10. Be tactful. Be feminine.¹

Methods of "reform" in the nature of suggestions for the improvement of the present status of marriage, and thereby to reduce the number of divorces, are almost as numerous as are the writers on the subject. Without citing specific authors, it is possible to group in a few paragraphs, the most conspicuous proposals.

A strategic point of attack is upon ill-advised marriages. This condition may be improved by facilitating the choosing of agreeable and compatible mates, by widening the possibilities of selection, and by more intelligent methods of courtship. A better understanding of the nature of love and of the marriage relationship, and a better preparation for its responsibilities on the part of both men and women would do much to forestall disillusionment and many of the difficulties which arise in marital experience.

Religious teachers lay great stress upon the revival of the Christian concept of marriage, upon the entrance into wedlock with the accompaniment of religious ceremonies rather than merely civil rites and social festivities, upon surrounding marriage with religious sanctions, upon "the necessity of chastity" and "the blessing of conjugal honor," upon cultivating the Christian graces within the marital relationship, and upon the adoption of the Golden Rule as the standard of marital behavior.

¹ BLAKE, DORIS, *Chicago Tribune*, Dec. 7 and 12, quoted by Mowrer, *Family Disorganization*, p. 10.

Moral leaders emphasize the value of ethical instruction and the duty of recognizing the larger social obligations of marriage which transcend individual interests. They urge the personal responsibility of cultivating common attitudes and activities, of mutual forbearance, of the studied effort to adjust difficulties, and of the achieving of compatibility through purposive and painstaking endeavor.

Social workers visualize certain deficiencies in the matter of preparation for home making as immediate sources of trouble. They favor domestic-science training for girls, instruction in budgeting and in household economy, in the management of servants, and in the care of children. Others stress the importance of adequate housing and home comforts together with the elimination of household drudgery. They point out the advantages of home ownership or at least the occupancy of a house, as stabilizing influences, versus the disadvantages of the rented flat or the apartment hotel.

Still others seek to rehabilitate disintegrating marriages, through reeducation and efforts at reconciliation by means of courts of domestic relations and marriage clinics. They advocate the passage of laws which will curb or diminish present abuses in both marriage and divorce.

There is much value in most, if not all, of these suggestions and with many others of like kind. They apply to acute conditions with which it is desirable to deal as helpfully as possible with the aid of such palliatives as are available. The reforms advocated, if vigorously applied, undoubtedly would do much to alleviate the present situation. With them, as such, little fault can be found.

But as a solution for the problem they are inadequate. They do not go to the roots of the matter. They contemplate almost wholly the reconstitution and preservation of marriages upon the idealized concepts and *mores* of the past. It is like putting "new wine in old wine skins." They fail to recognize the fact that conditions have changed,

that many of the old attitudes and ideals have been revised, and therefore, that "fresh wine skins" are required. To attempt to rebuild marriage today upon the theory of the equal capabilities of individuals to conform by an act of will to any set of rules, upon the assumption of its inherent religious character, upon the basis of successful house-keeping, or upon the acceptance of legal or other expert advice, and such like hypotheses, is to misunderstand and to misinterpret the trend of the times.

Radical. Because the concepts of modern marriage are in a state of flux it would have been unusual if the expression of reactionary and conservative views had not called forth contrasting opinions of more or less radical character. It would equally have been surprising had such opinions not been "viewed with alarm" by many traditionally minded people, and denied an impartial hearing. A candid study of the whole subject requires their consideration, along with others, whether we like them or not.

Three alleged proposals, commonly are referred to in this connection: free love, trial marriage, and companionate marriage.

Free love involves the concept of the abrogation of marriage in favor of unrestricted sexual promiscuity or at least, of casual and random matings without the restraint of marriage and with no presumption of permanency. In this form the subject may be dismissed rather summarily because it not only runs counter to human nature and experience but chiefly because no social reformer or social scientist ever has advocated it. It has been practiced by many irresponsible individuals, by some isolated preliterate peoples, and by a few sporadic religious cults, but not even the most radical thinkers of our day, who have proposed the liberalization of our sex ethics, have advocated unrestricted sex license. As a proposed program of marriage reform, therefore, it is a fiction of the imagination, known in common parlance as a "straw-man." Because of its sinister implica-

tions the term has been retained and given currency chiefly as a convenient derogatory epithet with which to damn the views of persons in respect to marriage or divorce which are regarded for any reason as "unsound" or "heretical," and to prejudice the minds of others against them.

Trial marriage suggests a tentative period of sex experimentation prior to marriage in order to determine the desirability of entering into the permanent relationship, or a definitely limited and prearranged period of such experimentation following a nuptial ceremony at the end of which period the relationship may be terminated should one or both parties desire to do so. In the prior form it has been labeled "free love," in the latter, "free love masquerading under the guise of marriage." But in either case it differs from free love in the sense that it contemplates permanency and conceivably might have some utility from that point of view. In this crude and arbitrary form, however, it stands practically in the same category as free love. It is a term to conjure with, rather than a seriously proposed program of marriage reform.

A few ultra-liberals, to be sure, have pointed out that some premarital sex experience, wisely limited, might prevent mismatings and consequent marital disaster.¹ Furthermore, in contradistinction to the concept of the irrevocability of the union, the possibility of divorce in case of failure, renders any marriage, to a degree, a "trial." In this sense, however, it is a fact of social history and experience rather than a theory, only the expediency of which may be challenged.

An illustration of the perturbation which may follow the use of a term which is subject to misapprehension and misinterpretation, is to be found in the following incident: In the fall of 1906 the public press gave advanced notice of a forthcoming volume by Dr. Elsie Clews Parsons on *The Family*, in which trial marriage was "advocated." Im-

¹ Cf. *supra*, p. 358.

mediately several papers, notably the *New York World*, in its issues of November 19 and 26, printed columns of comments and pulpit protests denouncing both the author and the book. All this was in advance of publication. When the volume appeared, it contained, beside two brief historical references to "time" and "trial" marriages among primitive peoples, the following comment: "As a matter of fact, truly monogamous relations seem to be those most conducive to emotional or intellectual development and to health, so that, quite apart from the question of prostitution, promiscuity is not desirable or even tolerable. It would therefore seem well from this point of view, to encourage early *trial* marriage, the relation to be entered into with a view to permanency, but with the privilege of breaking it if it proved unsuccessful and in the *absence of offspring*, without suffering any great degree of public condemnation."¹ It thus appeared that much of the criticism was beside the mark. This is far from the advocacy of unrestricted trial marriage of the "baser sort." Yet, in this modified and tentative form, set forth in the interest of morality and the improvement of monogamy, it comes nearest to the advocacy of trial marriage, from any responsible source, with which we happen to be acquainted. In substance the form suggested is definitely that of "companionate marriage" as championed by Judge Ben B. Lindsey and antedates the publication of his volume on that subject by twenty-one years.

Since interest in this subject is now merged with that of companionate marriage, and since criticisms apply in similar ways to both, this phase of the discussion is reserved for the following section. It should be remarked in passing, however, that whatever one's reaction may be to the suggestion, its chief merit consists in the clear recognition of the need for some reconstruction in marriage which will

¹ *The Family, an Ethnographical and Historical Outline*, pp. 348-349.

bring it more nearly into harmony with modern conditions of life.

*"Companionate Marriage is legal marriage, with legalized Birth Control, and with the right to divorce by mutual consent for childless couples, usually without payment of alimony."*¹

This definition by Judge Ben B. Lindsey sets forth succinctly the theory of companionate marriage as a program of reform. It is by no means an invention, as Judge Lindsey himself is careful to explain, of a new or experimental type of marriage but merely the frank recognition and more effective utilization of one already in existence.

Several years ago Dr. M. M. Knight pointed out that because of changes which have taken place in modern civilization, and almost without our having noticed it, certain very definite modifications in marriage already have taken place which have produced the *companionate* and the *family* types. He says: "Certain rites permitted people to live together, and nature quickly transformed this temporary companionship into a family in nearly every case . . . Thus the companionate was little more than an incident—a sort of novitiate—leading to the family, on which the survival of the group depended. This direct control of reproduction has largely broken down, due to the increased understanding of physiological processes. In one group of cases, we still have the initiation ceremony leading to the historic institution for reproduction and care of the young. In another, growing larger year by year, the same identical rites lead to a social unit which serves neither of these purposes—that is, the lengthy or permanent companionate."² The historical setting of this process he states as follows: "So much scientific and technical progress has been made during the past two centuries that

¹ LINDSEY, *The Companionate Marriage*, Preface, p. v.

² "The Companionate and the Family," *Journal of Social Hygiene*, Vol. X, No. 5, May, 1924, p. 259.

our social institutions have dropped out of the convoy and are wandering around in the swamps of ignorance and prejudice. The sickness of the family is only a symptom of a general maladjustment, due to the fact that we have created a new material environment so quickly that we cannot find our places in it. Never was human society riper for general change, and yet there are poor reactionaries who want to live in the void we have just moved out of, instead of settling down in the potentially more habitable world we have created. We cannot reestablish the old family founded on involuntary parenthood—the family has definitely split into two parts, neither of which is like their predecessor. They are related, they are both important, and they require regulation. The Companionate is more difficult to deal with for the moment, because more remote from anything we have experienced before. It can be regulated. It will have to be regulated. The first step is obviously to recognize its existence and attempt to get a square look at it.”¹

Mr. Horace J. Bridges, with equally clear insight says: “In all this talk about ‘companionate marriage’ the only novelty is the word, not the thing. Every marriage begins as a ‘companionate.’ This is what I meant by speaking of the transition from the ‘companionate’ to the parental stage. It is, in each case, simply a question how long the former shall last, and when it shall be exchanged for the latter. Unions that from any cause remain childless, *ipso facto* remain ‘companionates.’ . . .

“The social acceptance of what is already a fact—namely, the voluntary prolongation for economic or educational reasons, of the companionate stage of marriage—is, I think, at present, necessary. But unless the parties intend this stage to be overpassed as soon as possible, they are not in the best and truest sense married, and they are in grave danger of wrecking the relation that already sub-

¹ *Ibid.*, pp. 266-267.

sists between them. For, even at its best, a companionate is an incomplete marriage, and cannot permit of the finest spiritual fruitage."¹

Judge Lindsey's proposal in substance is that this existing companionate should be given a separate and legally recognized status along with traditional parental or procreative marriage; that it should be conditioned by scientific instruction in the use of contraceptive methods; that it should not necessarily involve economic support, leaving the parties free to continue their accustomed occupations; that it contemplates transformation into procreative marriage as soon as it is advisable for economic and other social reasons to do so; that in case of failure, and in the absences of children or wife's pregnancy, divorce should be allowed by mutual consent and without alimony except in unusual cases to be determined by the court.

In order to forestall needless and mistaken criticism, Judge Lindsey has taken particular pains to explain that this is not free love or trial marriage. He admits some points of similarity, but stresses the psychological difference. He says: "All men and women who are sensible and honest know when they marry that there is at least a possibility of failure ahead. But they assume that the chance is remote. They have confidence in their ability to weather all storms and make port. It is their intention to do that, and to make such adjustments as may be necessary to that end. That is marriage. That is the spirit of marriage. It involves the same recognition of risk that goes into trial marriage but it stoutly proposes to overcome and nullify that risk . . .

"Now the trouble with this attitude in ordinary marriage is that not enough account is taken of the risk. If the Trial Marriage psychology puts too much emphasis on the risk, the psychology of traditional marriage bull-headedly ignores it altogether . . .

¹ *The Fine Art of Marriage*, pp. 35-37.

“There is room for sane compromise between these two extremes. Men and women who enter marriage should be encouraged to do it under conditions that would best insure the success and permanence of the marriage, but which would also afford a line of retreat in case the marriage failed. They should not have children, for instance, till they have been married long enough to be reasonably sure of their ability to carry on together; and they should not have them till they can afford them. This is common sense. It is not Free Love or Trial Marriage at all. It may, as I have indicated, have a technical similarity to Trial Marriage, but legal technicalities are not what make a marriage. What makes a marriage is the spirit and intent of it. And the Companionate as described in this book is genuinely, if not technically, a different thing from Trial Marriage.

“I do not deny that it would be possible for people to enter the Companionate with a Trial Marriage psychology. But so is it possible for them to enter traditional marriage with a Trial Marriage psychology. Some do it; but they are not many. For such persons the unmarried union, achieved secretly, is easier, and involves less responsibility before society. The Companionate would not invite many such persons. Nor, since it would offer small hope of alimony, would it attract ladies of the ‘gold-digger’ type. It would give Marriage a chance to breathe and live; it would give it room in which to grow; it would give it soil in which to put forth roots; and would establish it on a better basis than it has yet known.”¹

On the basis of these statements it is obvious that many of the criticisms which have been launched against companionate marriage have been due to the reading into it of ideas which misconstrue those of its proponents. The subject should be considered on its merits after all false presuppositions are eliminated.

¹ *Op. cit.*, Preface, pp. vii-viii.

The chief exigency, which has created the actual and widespread companionate marriage now existing, as described by Messrs. Knight and Bridges, and upon which its separate legal recognition is advocated by Judge Lindsey and others, is the gap of several years, created by our changed economic, educational and other social conditions, for an ever-increasing number of young people, between the normal biological age of mating and the age at which marriage becomes an economic possibility. In this connection we quote again from Mr. Bridges: "Social conditions change, but human nature does not . . . Thus there is placed in the way of our finest young people a difficulty that must be met with something very different from an austere and unsympathetic *non possumus*."

"Please note," he continues, "that it is precisely the finest people for whom the difficulty is most real and acute. The coarser-grained youngsters, insensitive and selfish, resort cynically to promiscuous concubinage, made 'safe' by contraceptives. We must come to the rescue of both—first of those whose idealism is outraged by this animalism, and next of those who practise this animalism, unaware of that higher nature in themselves which they are thus profaning and throttling . . ."

"The alternative, then, to the prolongation of the companionate stage of marriage by means of birth control, is, for increasing thousands of young men and women, a state of celibacy which is unnatural, dangerous to some, and to many quite impossible. Let those who would refuse the required social recognition of the protracted companionate face the inevitable implications and consequences of their refusal. They would drive the young to despair, or to orgies of unregulated and unsanctioned indulgence disastrous to their psychic, mental and moral health, and sooner or later destructive to the traditional ideal of marriage."¹

¹ *Op. cit.*, pp. 45-50.

The objections urged against companionate marriage, aside from the hysterical reactions due to mistaken notions of its novelty and to false ideas of its meaning based on hearsay evidence, and aside from the theological presupposition of its inherent sinfulness, since "Intercourse even with one's legitimate wife is unlawful and wicked where the conception of offspring is prevented,"¹ are: that if it were to be accorded social recognition, as such, it would tend to become the rival of "true marriage" and by encouraging the formation of "transient attachments" would tend to lower the dignity of marriage to the level of mere "sexual association;"² that by increasing respect for marriages which are not intended, for the time being, to lead to the procreation of children, it would open the "flood gates to legalized lust;"³ and "that at best it is frankly an attempt at a compromise between marriages that are difficult to dissolve and clandestine relationships which have no sanction whatever."⁴

There is doubtless good ground for these contentions. They call attention to certain aspects of the problem which at least are debatable. Upon them there are conscientious differences of opinion. It is more than probable that the introduction of so radical a change in our marriage laws, as to provide for two distinct forms of marriage, would result for the time being, at least, in much confusion of ideas and in difficulties of adjustment to them, so that the social costs involved might be greater than the advantages secured.

It should be remembered, however, that to the advocates of the system the risks alluded to in these criticisms are the very ones which companionate marriage would tend to obviate. Thus Judge Lindsey says: "The fact is that Companionate Marriage, with divorce by mutual consent,

¹ Encyclical Letter of Pope Pius XI on Christian marriage.

² Cf. DE POMERAI, *Marriage*, p. 261.

³ Criticism repeated by Russell, *Marriage and Morals*, p. 164.

⁴ LIPPMAN, *A Preface to Morals*, p. 298.

would prove no more attractive to people bent on extremes of sex license than is marriage today. A few of these reckless ones might use it as a cloak for license, just as a few use marriage and divorce today; but they would be an insignificant handful. It would be so much easier for such persons to seek what they want in *liaisons*, just as they do now, that they would want no kind of marriage whatever. If promiscuity is one's object, why bother with the red tape and publicity of marriage, be it Companionate or otherwise. If one wishes to be lawless in one's sex relations, why seek them under such legal and social supervision?

"On the other hand, men and women who sincerely loved each other would gladly abandon all thought of the *liaison* because here would be a type of marriage suited to their needs; a marriage sufficiently stable, and yet not too dangerously irrevocable.

"Now suppose you combine with this deterrent and controlling power of public opinion, the restraints imposed on people by their own sense of personal decency and social responsibility; and add, besides, the restraining power exerted on most persons by the emotional ties that tend to grow out of the intimate contacts of marriage—even childless marriages—and you have an almost overwhelming evidence that the tendency of Companionate Marriage would be toward stable relationships, rather than toward reckless promiscuity."¹

This defense may be vain rationalizing or wistful thinking, or, it may be an expression of sound judgment seasoned by experience. It is offered, at any rate, by the advocates of companionate marriage, in the calm confidence that it is both good logic and good morals, let the reader judge it as he may.

The issue in regard to companionate marriage, then, is not an effort which is being made by its proponents to

¹ *Op. cit.*, pp. 190-191.

change existing marriage norms so as to include the recognition of the companionate aspect of marriage and of the right of the voluntary control of the birth rate. These already are accepted widely, practiced extensively, and sanctioned morally. The theory of enforced indissolubility regardless of the nature of marital relations is being replaced by the concept that continued choice and mutual desire constitute the only ethically valid basis for the perpetuity of marriages and that under such conditions of freedom, marriages in general have a greater chance of happiness and success even if some are dissolved, while the old concept of unrestricted procreation has given way very largely to the belief in the right of self-determination in the matter of offspring. No opprobrium now attaches to the voluntary postponement of parenthood, to personal inclination in determining the size of the family, nor even to intentional childlessness, although from a social or eugenic point of view, especially in the case of the well endowed, it may be regarded as unfortunate.

The real issue is the radical proposal that these *aspects* of present marriage should be visualized as constituting a new *kind* of marriage and that the parties should be regarded as occupying a somewhat different social and legal status than those living in family marriage. This is proposed for its psychological effect upon young people. It could be accomplished by the simple device of legalizing birth-control instruction and divorce by mutual consent, which would do away with "bootleg" contraceptives and with the subterfuges, the unnecessary expense, and the reprehensible publicity in obtaining divorces under existing conditions, should the marriage prove to be a failure.

Whether this change of status would help or hinder the solution of the present problem of marriage instability is highly problematical. It might help. It probably would help in certain respects. On the other hand it might result, as some have suggested, in causing invidious comparisons to

be made between the two types to the serious detriment of the one or the other, since it hardly is likely that the two would command equal respect. Others have pointed out that the same ends might be accomplished better by less drastic methods of reform, through the facilitating of the gradual modification of marriage concepts, which is going on now, and which, in time, doubtless will result in the further liberalization of the law without subjecting the dignity and sanctity of marriage to the risks which arbitrary and revolutionary changes would entail.

Regardless of what the outcome of companionate marriage may be, the purpose back of its advocacy has one merit, which even its severest critics can hardly overlook, even if they disapprove. It openly repudiates reactionary methods as ineffective in the present situation. They have been tried and have failed. It regards as equally inadequate the conservative program of endeavoring to patch-up existing marriages of the traditional sort. That too is failing in the light of contemporary facts. Conditions of marriage, as evidenced by the rising divorce rate are at the present getting worse instead of better. This proposal shifts the emphasis from repression to reconstruction. It candidly proceeds upon the hypothesis that there is something basically wrong with marriage itself, and that some way must be found to alter the situation through the reconstruction of traditional marriage concepts and through efforts to readjust the marriage institution to the conditions of the world in which we live.

Constructive proposals differ fundamentally from those of the reactionary, the conservative and the radical types. They represent in our connotation of the term constructive, the scientific approach. This procedure involves certain criteria which grow out of the scientific method itself. Science no more can proceed without assumptions than can logic without premises. The chief difference, however, is that while the presuppositions of science are themselves

generalizations from experience they are not accepted without critical reexamination and testing. A few of these generalizations of social science which underlie procedure in regard to the improvement of marriage, may be formulated as follows:

First—the visualizing of marriage as an emergent and evolving social institution based upon enduring, but changing, human needs. As such, it possesses no inherent fixity of type or finality of form. Like all other social institutions it must be judged pragmatically on the basis of its intrinsic worth in the service which it renders to the immediate needs which it exists to serve. Consequently no service to human well-being or to the institution itself can be rendered by efforts to preserve any form or function which has outlived its usefulness and which is maladjusted to changed conditions.

Second—the necessity for the correct diagnosis of the nature of the problem as it presents itself to us in contemporary life. No idealization of marriage, or theoretical assumption of its indissolubility, can be offered as an adequate substitute for a factual knowledge of what it actually is. There must be a fearless facing of the facts as they are, without personal bias or preference, if we are ever to acquire a real understanding of the situation. This requires an extensive program of research. A good beginning has been made, but until our knowledge is far more comprehensive than it is at present, effort at treatment must remain, to a large degree, tentative and experimental, and much of it, no doubt, will continue to be ineffectual.

Third—the clear recognition of the fact that no panacea can solve the problem. The cure-all has been the blight of reform in many other fields. It is the method of tyros and people of narrow vision. Everyone today who has any scientific knowledge about society knows that social ills are much too complicated for such simple treatment.

There is no single remedy for broken marriages any more than there is for diseases, for poverty, or for crimes. These problems, because of their complex character, must be attacked from many different angles simultaneously if any approximation to a solution is to be effected.

Fourth—the application of the indirect method of approach and the attack upon the causes rather than the results. Here experience is more impressive than argument. Our main dependence still, in the treatment of adult criminality, is upon the direct method of dealing with the effects, that is, upon the punishment of offenders after the crimes have been committed, as the means of crime repression. The result is increasing criminality and the overcrowded condition of our jails and penitentiaries. In contrast is our indirect method of the treatment of disease. Here the process has shifted from cure to prevention with notable improvement in the public health and in the reduction or elimination of contagious or infectious diseases, and other forms of illness. Our divorce courts probably will remain as crowded as our criminal dockets are, until we adopt the latter method and transfer our interest and efforts from divorce to constructive treatment of marriage disintegration.

Constructive programs, then, in the nature of the case, lack the appearance of directness and finality, of other types. Those who demand specific and immediate solutions must seek elsewhere for them. Instead they will find here reliance upon the employment of such means as are available or can be devised for facilitating desirable outcomes, rather than dependence upon arbitrary action to secure wished for results.

The phases of the problem at which constructive effort is aimed roughly may be described as institutional adjustment, individual marriage adjustment, and environmental adjustment.

Marriage as an institution has suffered the loss of dignity in public esteem as an anachronistic survival because of its inelasticity and its static resistance to change. This situation may be improved, not by exhortation to take a better view of it, but by improving its status so that it will compel automatically a greater degree of respect.

Much can be done by freeing it from impediments which hinder its better adaptation to modern requirements. Some suggestions are as follows:

The removal of the stigma of "divorce as a remedial measure" in the event of the complete disorganization of the marriage; the liberalization of the grounds of divorce in order to eliminate the subterfuges, the collusions, and the necessity of committing misdemeanors in order to secure legal divorce in intolerable marriage situations; the modification of procedure which will obviate the spreading before the gaze of a morbid public the salacious details of marital scandals; the abolition of semi-divorce or legal separations which are pernicious in their immoral consequences; the elimination of the absurd actions for breach of promise as a species of blackmail; the strict curtailment of alimony so as to prevent the exploitation of marriage as a profitable hold-up game.

Improvement in the stability of individual marriages that now rest so largely upon the "bondage which is perfect freedom" and are unions in which "personalities are merged but not submerged and individualities fused but not confused," is a process, not an incident, which requires a new set of attitudes and controls. Behavior must become internally self-directive. Negative ethics or "thou shalt not's," no longer can meet the requirements. It is the art of marriage rather than the art of household management, important as the latter is, that needs the super-emphasis. This calls, not for mechanical adjustments, but for a prolonged program of education, beginning in

early childhood, in which self-fulfillment is sought by means of co-adaptation rather than through unrestrained individualism. Irresponsible personality development cannot solve the problem of internal marital tensions due to temperamental and culture conflicts. Compatibility, never a gift but always an achievement, must be sensed as an objective which only can be realized by effort and by the employment of indirect means.

Elsewhere in our study we endeavored to show the causal connection between environmental changes and the increase of divorces.¹ It will be recalled, however, that the relaxation of environmental pressures was shown to have removed coercive supports and to have affected chiefly such marriages as lacked internal and voluntary coherence. It was predicted, furthermore, that until these internal resources of marriage were strengthened this trend probably would continue. It is now upon this better adjustment between marriages based upon the newer concepts and a constantly improving economic and social environment that constructive thinkers look for a general improvement of marriage conditions.

This again involves a long-continued process, and quick results cannot reasonably be expected. Any improvements, however, in the conditions of living which increase human well-being, whether they are elements of the material or of the non-material culture, are regarded as factors in the ultimate improvement of marriage relations, and are to be fostered in that interest.

It now should be apparent why constructive proposals are lacking in spectacular character. They are fragmentary as compared with others. They take the long-range view. They utilize all available resources. The ideal of lifelong monogamy, as held by reactionaries, is promulgated, even if their method of maintaining it is regarded as unsound. Many proposals of the conservatives are accepted as *ad*

¹ Cf. *supra*, Chaps. XI, XII, and XIII.

interim measures that are useful until prevention of the difficulties renders them unnecessary. Even radical reform programs may be viewed complacently as "laboratory experiments" which may yield valuable results.

But no matter how effective any or all of these proposed programs may be in bringing about improvements in marriage conditions, there is no final solution of the problem if by solution is meant an absolutely ideal situation in which perfect adjustment is reached and in which no failures will occur. No other institution ever has reached such a state of perfection. Marriage as a culture pattern is a part of the general stream of social culture whose very life history is one of change. Marriage, therefore, will continue in a state of adjustment to these continuously changing conditions, the rational guidance of which constitute the perpetual challenge to the collective intelligence and accumulated wisdom of the race.

Probable Future of Marriage and Divorce

At the risk of appearing more audacious than prudent, and in the face of "vociferous skepticism" on the part of certain "emancipated" and "sophisticated" critics, we venture to assert our belief, both in the perpetuity, and in the improvement, of marriage in the future. It does not seem reasonable to us to assume that a mode of life which is based upon the most fundamental qualities of human nature; which has evolved as the result of cumulative human experience; which has lasted through all the vicissitudes of changing civilization from the beginning until now, is likely to be abandoned because of the onslaught of hostile criticism of its present defects. There must be graver reasons than this for prophesying its decline. Those who predict the collapse of marriage seem to be lacking in historical perspective. Marriage has exhibited throughout its past history qualities of adapta-

bility and of persistence which inspire confidence that it can be reshaped to meet present and future demands.

No one, we conjecture, who has read the preceding chapters of this book will accuse us of unfamiliarity with the seriousness of present weaknesses and failures. We have discussed them with even too great candor perhaps for some, yet nothing in our investigation has been revealed to shake our confidence in the ultimate success and persistency of monogamic marriage. There is nothing in the present situation disconcerting as it appears to some to be, which seems to us to point inevitably to its overthrow, nor, in our judgment, has anything better been proposed as a substitute to take its place.

After an extensive study of the evolution of marriage in its various forms, Mr. Herbert Spencer sums up his conclusions as follows:

“The monogamic form of the sexual relation is manifestly the ultimate form; and any changes to be anticipated must be in the direction of completion and extension of it . . . Future evolution along lines thus far followed, may be expected to extend the monogamic relation by extinguishing promiscuity and by suppressing such crimes as bigamy and adultery. Dying out of mercantile elements in marriage may also be inferred. After wife stealing came wife purchase; and then followed the usages which made and continue to make, considerations of property predominate over considerations of personal preference . . . Already some disapproval of those who marry for money or position is expressed; and this, growing stronger, may be expected to purify the monogamic union by making it in all cases real instead of being in many cases nominal. As monogamy is likely to be raised in character by a public sentiment requiring that the legal bond shall not be entered into unless it represents the natural bond; so, perhaps, it may be that maintenance of the legal bond will come to be held improper if the natural bond ceases. Already increased

facilities for divorce point to the probability that whereas, while permanent monogamy was being evolved, the union by law, (originally the act of purchase) was regarded as the essential part of marriage and the union of affection as the non-essential, and whereas at present the union by law is thought the more important; there will come a time when the union of affection will be held of primary moment and the union by law as of secondary moment; whence reprobation of marriage relations in which the union of affections is dissolved. That this conclusion will be at present unacceptable is likely—I may say certain . . . Moreover with an increase of altruism must go a decadence of domestic dissension. Whence, simultaneously, a strengthening of the moral bond and a weakening of the forces tending to destroy it. So that the changes which may further facilitate divorce under certain conditions are changes which will make those conditions more and more rare.”¹

We have quoted somewhat at length because these predictions made over fifty years ago, toward the beginning of the period under survey, describe with rare accuracy the exact process we are witnessing, with the possible exception of diminishing promiscuity. At the moment there is much reason to believe, although actual proof is not available, that the process is the reverse, and that there is greater sexual freedom practised, both prenuptial and postnuptial. Assuming this to be the case, it still may be but a temporary aberration. It may be due to the acute reaction following the relaxation of ascetic sex taboos and to the current sex rampage, which later may be self-corrective through the disillusionment, the “moral nausea” and the bitter cynicism, even now apparent, among sex experimentalists, or, through a better appraisalment of the functions of sex in its contribution to a finer idealism in the larger interests of life, rather than that of mere physical gratification.

¹ *Principles of Sociology*, Vol. I, pp. 764-766.

This seems to us the most probable outcome. But even if it should turn out otherwise and freer forms of sex relationships should come to meet with limited social approval as matters of personal concern, as many believe will happen, still it does not follow necessarily that permanent monogamy thereby is endangered, since unless these relationships lead ultimately to marriage, to its perpetuity, and to offspring, they are in their nature self-eliminating. Marriage always will remain a competitor of any and all other systems of sex relations as the best means which collective human wisdom could devise for meeting the highest demands and obligations of personality, as well as the propagation and care of children, and since nature cuts off from participation in the continuance of the race those who are sterile by choice or by habit, as well as those who are so by defect, the convention of marriage possesses survival qualities, both biological and social, which tend automatically to preserve its continuity.

This does not mean, of course, that all individual marriages will fulfill these higher expectations. On the contrary, subjected to more exacting requirements, and transferred to a voluntary basis, it is to be expected that for some time to come an increasing number of them will fail.

The time is at hand which Mr. Spencer predicted, "when the union of affection will be held of primary moment" and we witness "the reprobation of marital relations in which the union of affection is dissolved." Coercive maintenance of marriages where all natural ties have been severed is coming to be regarded with the same degree of abhorrence as we now look upon coercive marriages in the past, whether by wife capture or wife purchase, or the later forms of *manus* or patriarchal domination. The dissolution of loveless marriages now is regarded as less immoral than their continuance. The enlightened conscience rebels against compulsion in sex relations, regarding

it as a species of rape as revolting within the marriage bond as it is without. With this change of views in regard to the inherent nature of desirable marriage, involving the right of individuals to happiness, there has resulted greater freedom of divorce, and a consequent rise in the divorce rate, despite reactionary efforts to prevent it as expressed in restrictive legislation. It has come about "within the law" or despite the law through connivance and evasion. That this "greater freedom" has been abused is beyond question. As previously pointed out, this usually happens when larger liberty is afforded even though the principle upon which it is conferred is ideal. This has been true in matters of divorce among those classes, always to be found in a complex and heterogenous society even of high culture, to which the better sentiments and the higher ideals do not appeal. Persons of this character often are to be found in circles where, because of their wealth or social standing, their behavior is particularly conspicuous.

As to ultimate results, Mr. Spencer is not alone in his contention that the situation is more favorable to the permanency of marriages than at present appears. Many other writers are impressed with the idea that the concepts of permanent monogamy and the growth of the sentiments essential to ideal, lifelong unions, which have evolved under the highly unfavorable conditions of the past suggest the superlative power of affection under more favorable conditions to accomplish what coercive processes have failed to achieve. Love is a far more compelling and constructive element than force.

The permanency of marriages demonstrably does not rest upon the external power of Church or State. Enduring marriages, and they are legion, are so because of their own intrinsic character. The incompetency of these external agencies to preserve marriages whose real foundations have given way, is evidenced by the divorce figures. Indeed it may be said that the failure of external controls has been

the occasion of this investigation in order to discover the real forces producing this actual disintegration of marriages and to find out upon what other means we are to depend for increased security if it is to be obtained.

Paradoxical as it may appear it is the reverse of the traditional process which seems to give the greatest promise of success, that is, the loosening of the marriage bonds in order to strengthen them.

There is little danger that conjugal affection and all the finer sentiments associated with the ideals of married life at its best, the products of a long and painful experience, will of themselves fade away or become less effective. They can be crushed to death but they thrive in an atmosphere of freedom. Men and women will continue to love, court, and marry, as they always have done because it is their nature to do so. On the basis of spontaneous affection, involving a purely voluntary relation, and as a free "troth plight" of equals, the prospect of the continued happiness and lasting quality of the relationship will be enhanced, for, as Mona Caird declares: "The husband and wife of the future will no more think of demanding subordination, on the one side or on the other, than a couple of friends who had elected to live together would mutually demand it. That, after all, is the true test. In love there ought to be *at least* as much respect for individuality and freedom as in friendship. Love may add to this essential foundation what it pleases; but the attempt to raise further structures without this as a basis, is to build for oneself a castle in the air. It cannot last and it does not deserve to last."¹

Mankind thus took a long step in the direction of happiness when marriage was made a matter of mutual consent and came to be regarded as invalid unless entered into by the free choice of both parties. It will take another such step when the same sentiments, to which now are entrusted the formation of the union, are deemed adequate to

¹ *The Morality of Marriage*, p. 145.

safeguard its continuance. As matters now stand, no sooner is this freedom of choice exercised and the marriage ceremony performed, than many fall back upon the traditional notion that the union must be reinforced by legal bulwarks. Theoretically this "reinforcement of the will and affection" should effect an indissoluble union. Frequently, in actual experience, it does not, and for reasons which are not far to seek. It happens all too frequently that as soon as couples are "safely married" and unmindful of the fact that abiding love and enduring friendship are cultivated objectives which are more easily lost than won, they immediately subordinate the natural bond to the legal, replace at once the studied regard for each others feelings which fostered selection and nurtured the expectations of future happiness, by an attitude of *laissez faire*, and promptly relax all efforts to please and to conciliate, and proceed in their relationships with each other on the assumption that no further endeavor to achieve continued happiness is required.

If the husband could be made to realize that the only means by which he could retain his wife are those by which he won her, he would not likely assert a repugnant authority or assume an attitude of arrogance distasteful to her, but rather, would continue to pay deference to her wishes and to concede to her the freedom and responsibility for her own personality. If the wife, in turn, should become convinced that she could not summon legal aid to retain her husband's affection, nor to hold him against his wishes, she would doubtless endeavor to maintain the qualities which made her attractive to him before marriage. Such an attitude on the part of married persons toward each other would not, of course, guarantee congeniality in case of the existence of incompatible traits, nor would it annihilate the external difficulties which beset marriage. It would minimize the chances of their "drifting apart," it would create a situation in which conjugal affection

would have greater opportunity for survival, and it would increase measurably the probability, in multitudinous instances, of greater marriage permanency.

Those who value the letter above the spirit and who consider the outer form of greater consequence than the inner relations, will fear to make the experiment of trusting the perpetuity of marriage to these finer sentiments and voluntary procedures, and will continue, no doubt, to seek to supplant natural forces by artificial means.

That these somewhat ideal conditions in marriage will be achieved fully, or even approximately, in the immediate future is not to be expected and is predicted by no one. It will be a long-drawn-out process which will require patience and much constructive effort. But such is the nature of the causes assigned as responsible for the disintegration of marriages and for the rapid increase of divorces, that in their ultimate effects they will become elements of social stability in which marriages will share and thereby will tend to make divorces more rare. This, at least, is a thesis which is by no means lacking in reasonable probability and which is asserted with much assurance by many modern students of the subject.

"The idea of the unhappy marriage" says Leonie Ungren-Sternberg, "is still current among us; in the future it will probably be a curiosity."¹

In conclusion, we quote from Mr. Walter Lippman, a statement to which we subscribe as the essence of the conclusions which we have derived from our study. He says: "With the dissolution of authority and compulsion, a successful marriage depends wholly upon the capacity of the man and the woman to make it successful. They have to accomplish wholly by understanding and sympathy and disinterestedness of purpose what was once in a very large measure achieved by habit, necessity, and the absence of any practicable alternative. It takes two persons to

¹ "Marriage in the Future," in Keyserling, *The Book of Marriage*, p. 270.

make a successful marriage in the modern world, and that fact more than doubles its difficulty. For these reasons alone the modern State ought to do what it would none the less be compelled to do; it ought to provide decent ways of escape in case of failure.

"But if it is the truth that the convention of marriage correctly interprets human experience, whereas the separatist conventions are self-defeating, then the convention of marriage will prove to be the conclusion which emerges out of all this immense experimenting. It will survive not as a rule of law imposed by force, for that is now, I think, become impossible. It will not survive as a moral commandment with which the elderly can threaten the young. They will not listen. It will survive as the dominant insight into the reality of love and happiness, or it will not survive at all. That does not mean that all persons will live under the convention of marriage. As a matter of fact in civilized ages all persons never have. It means that the convention of marriage, when it is clarified by insight into reality, is likely to be the hypothesis upon which men and women will ordinarily proceed. There will be no compulsion behind it except the compulsion in each man and woman to reach a true adjustment of his life."¹

¹ *A Preface to Morals*, pp. 211-212.

INDEX

A

Abduction, 24
 Abelard, 83
 Abortion, 177
 Adaptation, social problem of, 262ff.
 Adjustments, intramarital, 411
 Adolescence, 362, 368
 Adultery, decrease of, 355
 moral equivalents of, 326
 not cause for divorce, 40, 62, 65, 69
 over-emphasis upon, 325, 331
 "spiritual," 89
 Affection, alienation of, 345
 Affinities, 342
 Affinity, sexual, 374
 Alienation, process of, 401
 Alimony, 438, 441
 Altruism, increase of, 453
 Ambrose, 83
 American colonies, civil marriage in, 97
 few divorces in, 301
 American women, morality of, 253, 309, 328
 Americanization, 399
 Amram, David, cited, 46, 48, 49
 quoted, 44-45
 Ancient law codes, divorce in, 37ff.
 Ancient laws and institutes of Wales,
 divorce in, 66ff.
 Anesthesia, sexual, 372
 Annulment, 89ff., 345, 431
 evils of, 90-91
 Anselm, 83
 Anthony, Susan B., 197
 Art of love, 377, 378
 Art of marriage, 449
 Ascetic, attitudes, 356
 influences, 79ff., 366

Asceticism, doctrine of, 79ff.
 influence, on Christian fathers, 79
 on marriage, 79ff.
 Attitudes, conflicting, 393ff.
 emergent, 340
 Authority, dissolution of, 360, 458
 ecclesiastical, questioned, 326
 new basis for, 323
 new type of, 318, 323
 seat of, shifting, 319
 waning of, 431
 weakening of, 391, 323
 Autocracy, ecclesiastical, subversion of,
 360
 Autonomy, dual, in marriage, 396

B

Barton, George A., cited, 23
 quoted, 40-41
 Bastardy, 354
 Beale, Courtenay, cited, 377
 quoted, 365, 372, 373
 Bebel, August, cited, 82
 quoted, 274-275
 Behavior situations and processes, con-
 flicting, 399ff.
 Bertillon, M., cited, 118, 174
 Bill of divorcement, 27, 45, 49, 51
 Biologic factors, 374ff.
 Biological divergences, 375ff.
 Birth control, 351ff., 438, 442
 legalized, 438, 445
 necessity for, 352
 tensions over, 401
 wisdom of, 352
 Blackstone, 338
 Blake, Doris, cited, 433
 Bossard, J. H. S., cited, 404
 quoted, 267, 407

Boyles, G. J., cited, 283
 Brandt, Lillian, quoted, 352-353, 399
 Brehon laws, divorce in, 69ff.
 Breuer, Elizabeth, cited, 308
 Bridges, H. J., quoted, 439, 442
 Bryce, Lord James, cited, 57, 328
 quoted, 252-253
 Bucer, 98
 Bullinger, 98

C

- Caird, Mona, quoted, 13, 456
 Calhoun, A. W., quoted, 298, 301-302, 310-311
 Calverton and Schmalhausen, cited, 364, 374, 377, 381, 385, 388
 Campbell, Charles, quoted, 407-408
 Canon law, 79, 89
 Capper, Senator A. A., 199
 Capper Bill, 199, 200, 206, 208
 Carpenter, Edward, cited, 377
 Carruthers, L. A., 101
 Case studies, psychoanalytic, 394
 Cause for divorce, 16
 single, 257
 Celibacy, 82, 85
 sacerdotal, 93
 Ceremony, marriage, early forms of, 25, 55, 60, 76
 nuptial, 357, 377
 purpose of, 17
 Chapman, Mariston, cited, 117
 Chastity, 325, 433
 Childhood, warped, 371
 Children, as affected by divorce, 135ff.
 effect of, on divorce, 135ff.
 Christian, asceticism, 80
 emperors, 88, 89
 fathers, 79, 80, 85, 88
 attitude toward marriage, 81
 idealism, 323
 marriage ideal, 323
 Church, function of, 99, 210
 Churches, conservative influences of, 312ff.
 Civil-contract theory of marriage, 95ff.
 Civil legislation, divorce in, 154ff.
 Civil marriage, 94
 in England, 95
 in France, 96, 97
 in Holland, 95
 in the United States, 97
 Civil-Marriage Act, 95, 96
 Civilization, modern, divorce in, 74ff.
 Class distinctions, 402
 Clergymen, liberal, 319
 liberal views of, 322ff.
 Code of Hammurabi, divorce in, 38ff., 49
 Coldness (frigidity), 373, 378, 379
 Colonial period, 297, 301
 Colonies, civil marriage in, 97
 few divorces in, 301
 Colquhoun, Patrick, quoted, 57, 59
 Companionate, the, permanent, 438
 prolongation of, 442
 temporary, 438
 Companionate marriage, 177, 438ff.
 arguments for, 443ff.
 criticisms of, 441, 443ff.
 defined, 438
 reasons for, 438ff.
 Companionship, harmonious, 347
 Compatibility, demand for, 345ff.
 Competition, pressure of modern, 272
 Complex, culture, 258, 398
 Freudian, 362
 habit, 412
 inferiority, 287
 Œdipus, 397
 psychological, 412
 romantic, 340ff.
 sexual, 364, 375
 superiority, 349
 Comte, August, 7
 quoted, 8
 Conception, fear of, 352
 prevention of, 352
 Conflict factors, in marriage, 391
 Conflict situations, in marriage, 398, 415
 Congregational churches, legislation on divorce, 237ff.
 Conservative remedies, 432ff.
 Constructive effort, 448
 Constructive remedies, 446ff.

Contraceptive knowledge, 354, 356
 programs, 448
 Contraceptives, 352, 353, 442
 "bootleg," 445
 wide use of, 177, 351, 354, 356
 Controlled fecundity, 350ff.
 Controls, failure of existing, 247ff.
 Cooley, Charles H., quoted, 254, 287,
 289, 290, 309, 310
 Copernicus, 316
 Co-respondent, professional, 182
 Costs of progress, 269ff.
 Council, of Arles, 88
 of Carthage, 88
 of Florence, 87
 of Trent, 84, 87, 91
 Courtship, 257, 344, 372, 380
 amorous, 346
 tragedies of, 369
 Cromwell, Oliver, 97
 Crudities, 402
 Culture, adaptive, 258, 259, 260
 American, 341
 change, processes of, 258ff.
 complexes, 398
 conflicts, specific, 398ff.
 educational, 305
 lag, 6, 259, 307, 426
 levels, 26
 material, 258, 260
 pattern, 451
 Current explanations, inadequacy of,
 250ff.
 Cyprian, 83

D

Darwin, Charles, cited, 317
 Davies, S. P., quoted, 406
 Davis, Katharine B., quoted, 351, 353,
 370, 383, 384, 403
 Declaration of Independence, 295
 Deficit economy, 427
 Dementia, 407
 Democracy, significance of, 289, 290,
 292
 Democratic movement, 289ff.

De Pomerai, Ralph, cited, 51, 331, 366,
 367, 443
 quoted, 347, 357-358, 366, 385, 403
 Deserters, 353
 Desertion, 106, 107, 352-353, 399
 Determinism, economic, 363
 Disease, new mental, 353
 Diseases, deficiency, 404
 degenerative, 404, 407
 venereal, 405
 Disharmony, ignorance of nature of,
 381, 382, 385
 Disillusionment, in marriage, 344
 of husbands, 349
 of youth, 358, 387
 Disintegration, process of, 255ff.
 Divergent life patterns, 413
 Divorce, *a mensa et thoro*, 89
 affected by World War, 111
 among church attendants, 313-315
 and marriage rates compared, 151ff.
 as moral sanitation, 324, 327
 cases contested, 177
 causes of, 16
 dormant, 288
 in changing concepts of marriage,
 334ff.
 in conflicting behavior situations
 and processes, 390ff.
 in economic change, 262ff.
 in revised ethical and religious
 views, 312ff.
 in sexual maladjustment, 359ff.
 in the progress of liberalism, 289ff.
 number of, by states, 181-182
 civil jurisdiction in, 96ff.
 colony, 156, 179
 comparative increase of, 149ff.
 conditions as to children, 135ff.
 definition of, 17, 106
 domination of religion over, 75
 due to higher ethical consciousness,
 322
 early customs of, 26
 ecclesiastical attitude toward, 76
 legislation on, 210ff.
 economic factors in, 263ff.

Divorce, effect of law on, 185-186
 effect *versus* cause, 16
 effects of legal changes, 170ff.
 effects of marriage forms on, 30ff.
 Federal Amendment, 187ff.
 freedom of, greater, 455
 geographic distribution of, 112ff.
 in ancient law codes, 37ff.
 in ancient laws and institutes of Wales, 66ff.
 in ancient laws of Ireland, 69ff.
 in Anglo-Saxon laws, 62ff.
 in Brehon laws, 69ff.
 in civil legislation, 154ff.
 in Code of Hammurabi, 38ff.
 in early German law, 59ff.
 in early Roman law, 54ff.
 in foreign countries, 108ff.
 in laws of Manu, 41ff.
 in modern civilization, 74ff.
 in Mosaic law, 44ff.
 in preliterate societies, 19ff.
 in Protestant parishes, 313ff.
 in teachings of Jesus, 50ff.
 increase of, 103ff.
 compared with population growth, 142ff.
 index of prosperity, 270
 jurisdiction in, 300, 302
 law, changes in, 162ff.
 proposed uniform, 188ff.
 purpose of, 247
 limited, 89ff.
 meaning of, 106
 migratory, 180, 206
 misapprehensions concerning, 16
 nature of, 16ff., 256
 origin of, 20ff.
 petitions, denied, 178, 179
 probable future of, 451ff.
 problem, approach to, 4, 5
 procedure, 37, 89, 163, 347
 early, 26
 rates, rural, 118ff.
 urban, 118ff.
 variations of, 112ff.
 reform, inadequacy of, 243-244, 434

Divorce, reform attack upon, 18
 regarded as evil, 4, 5, 75ff.
 remedies for, conservative, 432ff.
 constructive, 446ff.
 radical, 435ff.
 reactionary, 429ff.
 reports, Federal, 100ff.
 secular control over, 99
 sexual factor in, 383ff.
 significance of trend of, 106ff.
 single cause for, 257
 social phenomenon, 20
 sources for statistics of, 100ff.
 stigma of, 449
 trend of, 100ff.
 variations of, 112ff.
 worse evils than, 324, 432
 Dogmatic Age, passing of, 315ff.
 Dogmatism, medical, 317
 Domestic happiness, higher ideals of, 331ff.
 Dorsey, George A., quoted, 375
 Drifting apart, 346, 409ff., 457
 Drudgery, household, 275, 434
 Dyke, Rev. Samuel W., 187-189, 238

E

Ecclesiastical autocracy, subversion of, 360
 Ecclesiastical jurisdiction, evils of, 93
 Ecclesiastical legislation, increasing stringency of, 243, 248
 on divorce, 210ff.
 Ecclesiastical marriage, rise of, 77ff.
 Economic change, causes for divorce in, 262ff.
 Economic determinism, 263
 Economic emancipation of women, 280ff.
 Economic factors in divorce, 363ff.
 Edmonds, Representative, G. W., 198
 Education, disparity in, 401
 increase in, 303ff.
 Eighteenth Amendment, 208, 293
 Ellis, Havelock, cited, 377
 quoted, 359, 365, 378
 Elopement, 24

Endocrinology, 361
 Environmental factors, 260ff.
 Environmental pressures, 260ff.
 Eroticism, 364
 Esmein, quoted, 79, 88
 "Eternal triangle," 349, 364
 Ethical attitudes, new, 340
 Ethical concepts, revised, 319ff., 340
 Ethical outlook, present, 332
 Ethical values, 332, 358
 Ethical views, revised, 312ff.
 Ethics, practical, 322, 329
 traditional, 332
 Eubank, Earl E., quoted, 107, 353
 Eugenics, 253, 351
 Evils formerly endured, intolerance of, 327ff.

F

Factorizing, 255, 415
 Factory production, 273
 Family, economic function of, passing, 277ff.
 patriarchal form of, 6, 36, 41, 45, 55, 285, 308, 430
 Fecundity, controlled, 350
 Federal Amendment, 187, 197ff.
 arguments for and against, 201ff.
 purpose of, 202, 203
 Federal Council of Churches, 221, 243
 Feeble-mindedness, 405-406
 Feminism, 307
 Feminists, 300
 Fielding, William J., cited, 377, 384
 quoted, 367, 370, 375, 379, 380
 "Flaming Youth," 387
 Foreign countries, divorce in, 108ff.
 Foreign population elements, 399
 France, civil-contract marriage in, 96
 Free love, 435ff.
 Freedom, inexperienced, 348
 versus coercion, 348ff.
 Freisen, quoted, 62
 French Revolution, 96, 342, 426
 Freudian complex, 362

Frigidity, 352, 372
 (coldness), 378, 379
 Functional method of interpretation, 255-256
 Fundamentalism, 318

G

Galton, Francis, 253
 Geographic distribution of divorce, 112ff.
 Germanic law, early, divorce in, 59ff.
Get (Hebrew Bill of Divorcement), 45, 48, 49
 Gillen, Ditmer, and Colbert, cited, 404
 Ginnell, Lawrence, quoted, 69, 73
 Glasson, E. D., quoted, 97
 Gold-digger type of woman, 441
 Goodsell, Willystine, quoted, 80, 81, 85, 307-308, 395-396
 Gratian, 83, 90
 "Gretna Green," 156
 Grogan, S. M., 101
 Group control, primary, 311ff.
 Groves, Ernest R., quoted, 340

H

Habit of mind, legalistic, 162
 Haddock *v.* Haddock, 204
 Hale, Beatrice Forbes-Robertson, quoted, 350, 388
 Hamilton, G. V., cited, 383, 384, 394
 quoted, 351-353, 370-371, 392, 401
 Hamilton and Macgowan, cited, 157, 373
 Hammurabi, 337
 Code of, 38ff.
 Hancock and O'Mahoney, quoted, 70
 Hankins, Frank H., quoted, 32-33, 121-122
 Hart, Hornell, quoted, 387, 388
 Hays, Arthur G., cited, 384
 quoted, 381, 384-385
 Heape, Walter, cited, 376
 Hebrews, early, divorce among, 27
 Hieronymus, quoted, 82
 Hilary, 83

Hill, Joseph A., 100
 Hillel, school of, 46
 Historical method, 19, 92
 Hobhouse, L. T., cited, 24, 41, 42
 quoted, 31-32, 56
 Hobhouse, Wheeler, and Ginsburg,
 cited, 32
 Holland, civil-contract marriage in, 95
 Home, pressure of modern economic
 life on, 273ff.
 Homosexuality, 357, 368
 Hoover, President Herbert, quoted, 268
 House, neglected, 275
 Howard, George E., cited, 254, 301
 quoted, 11, 21, 26, 35, 58, 61, 63,
 77-81, 85, 89-94, 96, 97, 155-
 157, 171, 253, 276, 300-301
 Hugo of St. Victor, 83
 quoted, 84
 Human nature, perversity of, 4, 316
 Humanitarianism, new, 321
 Hunt, W. C., 101
 Husband, domination of, 338, 399
 Husbands, divine right of, 338
 failure of adjustment of, 349, 350
 paternalistic rôle of, 349
 shortcomings of, 379
 wives' subjection to, 338

I

Illegitimacy, 176, 336, 431
 Incompatibility, sexual, 380ff.
 Individualism, American, 296ff.
 risks of, 298
 Individualization, divergent, 409ff.
 phases of, 410, 412
 process of, 409ff.
 Industrial Revolution, 266, 291, 394,
 426
 Industrialization, 310, 367
 Industry, family pattern of, 277
 Insanity, 270, 366, 406-407, 411
 Institutions, crystallization of, 420
 nature of, 420
 social, 420ff.
 Intellectual era, modern, 317
 Intelligence, low grade, 405

Inter-Church Conference, legislation on
 divorce, 241ff.
 Inter-Church Council, 315
 Interests, conflicting, 393ff.
 divergent, 346
 Intermarriages, educational, 401-402
 racial, 399-400
 religious, 400-402
 social class, 402-403
 Internal cohesion, factors of, 279
 Interpretation, natural history process
 of, 20
 Ireland, divorce in ancient laws of, 69ff.
 Irenaeus, 82

J

Jastrow, Joseph, quoted, 374
 Jefferson, Thomas, 305
 Jesus, teachings of, 50ff., 76, 82, 88, 325
 Jewish law of divorce, 44ff.
 Johnsen, Julia E., cited, 202
 Jones, Senator A. A., 198
 Jones Bill, 198
 Josephus, quoted, 47
 Jung, C. G., quoted, 366
 Justice, American ideals of, 296
 Justin Martyr, 82

K

Kelsey, Carl, cited, 337
 quoted, 420
 Kent, Chancellor, quoted, 301, 352
 Keyserling, Count, cited, 458
 Kirkpatrick, Clifford, cited, 317
 Kitchen, S. B., cited, 251
 Klein, Julius, cited, 268
 Knight, M. M., quoted, 438, 442
 Kohler, cited, 26

L

Law, effect on divorce, 168ff., 185-186
 of nature, 379
 popularization of, 299ff.
 uniform marriage and divorce, 187ff.
 Lecky, W. E. H., quoted, 10

- Legal changes, data for, 155ff.
 effects of, 170ff.
 Legal regulations, greater stringency of, 171
 Legal separations, 89, 313, 431, 449
 Legislation, greater stringency in, 154
 trend of, 154ff.
 Letourneau, cited, 26
 Levels, culture, 26
 socio-economic, 402
Liaisons, 444
 Liberal clergymen, views of, 322ff.
 Liberal movement, value of, 292
 Liberal trend, irreversible, 293
 Liberalism, American spirit of, 294, 295
 progress of, 289ff.
 Lichtenberger, J. P., cited, 91
 quoted, 93
 Life, schematization of, 412
 Life patterns, 412-413
 Lindsey, Judge B. B., 177, 437, 442
 cited, 354
 quoted, 438, 440-441, 443-444
 Lippmann, Walter, cited, 365
 quoted, 342-343, 354-355, 360-361, 458-459
 Lombard, Peter, 83, 90
 quoted, 84, 86-87
 Love, art of, 377, 378
 connubial, 345
 erotic, 345
 essence of true marriage, 325, 340
 ethical core of marriage, 341
 physiology of, 379
 psychology of, 379
 romantic, 341ff.
 Love bond, ethical soundness of, 345
 Luther, Martin, 98
 cited, 91, 93
 quoted, 92-94, 337
 Lutheran Church, legislation on divorce, 234ff.
- M
- Machine age, 267
 Maine, Sir Henry, cited, 34, 70
 quoted, 69
 Maladjustment, marriage, 364
 sexual, 359ff., 369, 383, 384
 Man, civilized, more erotic, 364
 Manu, laws of, divorce in, 41ff.
 Marriage, age of, declining, 424
 art of, 449
 ascetic views on, 79ff.
 bad, 158, 253, 254
 ceremony, early forms of, 25, 55, 60, 76
 christian concepts of, 325, 433
 civil-contract theory of, 95ff.
 collapse of, prophesied, 419, 451
 companionate, 177, 437ff.
 arguments for and against, 443ff.
 comparative increase of, 145ff.
 concepts of, changing, 334ff., 391
 conflict factors in, 391
 definition of, 13, 14, 257
 difficulties of, increasing, 459
 early aspects of, 25ff.
 ecclesiastical, rise of, 77ff.
 ethical core of, 341
 forms of, 30ff.
 fragility of, increasing, 345, 392
 functions of, 14, 15, 22, 335ff.
 changed attitudes toward, 339ff.
 future of, probable, 451ff.
 ideals, revision of, 339
 indissolubility of, 313, 339
 institutional character of, 4, 5, 12, 13, 259, 360, 419
 Jesus' teachings on, 50ff.
 Jewish views on, 44ff.
 laws, changes in, 155ff.
 legalized prostitution, as, 276
 legalized sex relations, as, 326, 335-336, 374
 loveless, 325, 330, 332, 340
 manus, 55ff.
 mixed, 399ff.
 moral basis of, 332
 moral value of, 321
 morally valid, 249, 332
 nature of, 12ff.
 norms, 335ff., 445
 obsolete, 350ff.
 origin of, 21, 50, 76

- Marriage, patriarchal form of, 6, 36, 41,
 45, 55, 285, 303, 430
 personal relation aspect of, 12, 14, 15,
 419
 popularity of, increasing, 425
 rates, among divorcees, 175
 among widowed, 175
 rising, 423-424
 rise of ecclesiastical, 77ff.
 rites, purpose of, 25
 romantic conception of, 342ff.
 sacramental character of, 6, 313
 theory of, 85ff.
 sacred character of, 13, 76, 249, 313
 salvation of, 429
 secular control of, 75ff., 88, 89
 sexual factor in, 364ff.
 successful conditions of, 458
 trial, 23, 436ff.
 ultimate form of, 452
 ultimate test of, 339
 will it survive?, 419ff.
 Martindale, J. B., 155
 Martineau, Harriet, cited, 281
 Marx, Karl, cited, 265
 quoted, 264
 Mason, O. T., cited, 281
 May, Geoffrey, 155
 McGee, quoted, 432-433
 Medieval dogmatism, 317
 Medievalists, 323
 Mental deficiency, 405ff.
 Meriam, Lewis, 100
 Messer, Mary Burt, cited, 80, 81, 338
 quoted, 90, 341-342, 344-345
 Methodist Episcopal Church, legisla-
 tion on divorce, 225ff.
 Migratory divorces, 180, 206
 Milton, John, 92, 98
 Mishna, 44, 46, 49
 Mixed marriages, 399ff.
 Money, conflicts over, 394, 395
 Monogamy, 30, 31, 34, 388, 437, 450,
 452
 Montaigne, quoted, 430
 Moral advance, 252, 322
 Moral attitudes changing, 312ff., 320
 Moral decadence, 252, 330
 Moral depravity, 406
 Moral leaders, 434
 Moral pressure, 322
 Moral sanitation, divorce as, 324, 327
 Moral standards, relative, 5, 397
 rising, 321
 Morality, defined, 320
 new, 320
 origin of, 319
 orthodox, 371
 revised concepts of, 319ff., 329
 Morals, changing views of, 315ff.
 dual standard of, 329
 equal standard of, 329
 Morbidity, sexual, 364
Mores, group, 420
 marriage, new, 348
 new, in regard to leisure, 275
 of the past, 432
 reconstruction of, 307
 sex, conventional, 357
 Morgan, Lewis H., quoted, 265
 Morgan, M. de, 38
 Morons, 406
 Morselli, E., quoted, 270
 Mosaic Law, divorce in, 44ff.
 Moses, teachings on divorce, 51-52
 Mowrer, E. R., cited, 123, 358
 quoted, 136-137, 342, 344, 348, 382,
 390, 412, 432
 Müller, F. M., cited, 41, 42
 Myerson, A., quoted, 407
- N
- Negro, emancipation of, 292, 299
 divorce rates, 117, 123ff.
 New Orthodoxy, 397
 New Theology, 317, 324
 Newton, Rev. Joseph F., quoted, 324-
 325
 Nineteenth Amendment, 292
 Norms, marriage, 335ff.
- O
- Ogburn, W. F., 259
 O'Hare, Kate, quoted, 428

- Organic method of interpretation, 255ff., 409
- Origen, quoted, 82
- Origin of Species*, influence of, 317
- Orthodoxy, new, 397
- religious, 318
- P
- Pain economy, 265, 427
- Panaceas, inadequacy of, 447
- Parenthood, voluntary, 350ff.
- Parkhurst, Genevieve, 198, 206
- Parsons, Elise Clews, 436
- quoted, 437
- Particularist method of interpretation, 255-256, 264
- Paterfamilias, 34, 55
- Pathological factors, in divorce, 403ff.
- Patriarchal family organization, 36, 38, 41, 45, 55
- Patriarchal theory, 34
- Patriarchalism, disintegrating, 66
- a hangover, 285
- Patten, Simon N., quoted, 427-428
- Pattern attitudes, baneful, 371
- Peabody, Rev. F. G., quoted, 18
- Pennsylvania Dutch, 116
- Pennypacker, Gov. Samuel W., 189, 190
- Perversity, human, 402
- Philo, 48, 49
- Pictorial Review*, 198ff., 206
- Pleasure economy, 265, 427
- Plutarch, 56
- Point of view, scientific, 4ff.
- Polyandry, 30, 31, 35, 36
- Polygamy, 30, 31
- Polygyny, 30, 32, 33, 35, 60
- Pope Pius XI, cited, 430, 443
- Popenoe, Paul, cited, 351, 356
- quoted, 385
- Popular learning, increase of, 303ff.
- Post, A. H., cited, 26
- quoted, 27-28
- Pregnancy, fear of, 353, 382
- Preliterate societies, divorce in, 19ff.
- Presbyterian Church, legislation on divorce, 217ff.
- Pressure, moral, 322
- Pressures, environmental, 262ff.
- tensions *versus*, 390ff.
- Primary group controls, 309ff.
- Progress, costs of, 269ff.
- Promiscuity, 356, 444
- sexual, 355, 357
- Prostitution, 285, 407
- decline of, 405
- Protestant churches, 211, 215, 216
- divorce in, 313ff.
- position on divorce, 53
- Protestant clergymen, attitude toward divorce, 248
- Protestant Episcopal Church, legislation on divorce, 212ff.
- special divorce investigation by, 313ff.
- Protestant Reformation, 99ff., 291, 293, 426
- effects on divorce, 91ff.
- Prudery, 373, 378
- passing of, 364
- Psychiatrists, 378, 384
- Psychic aberrations, 408-409
- Psychoanalysis, 382
- Psychoanalysts, 378, 381
- Psychoanalytic technique, 362, 365, 383
- Puritan New England, 337, 354
- Puritanic repression, 366
- Puritanic society, 357
- Puritanism, 97
- effect on divorce, 116
- stern morality of, 320
- Q
- Quakers, 116
- R
- Rabbinical interpretation, on divorce, 44, 52
- Readaptation, institutional, 422
- Reformation, Protestant, 91ff., 426
- Reformed Church, legislation on divorce, 231ff.

- Reformers, bias of, 7
 Religion, changing functions of, 323
 changing views in, 315ff.
 conservative influence of, 312ff.
 differences in, 400
 new cult in, 319
 Religionists, 3, 421
 Religious conservatism, 98, 312ff.
 Religious situation, present, 316
 Religious views, liberal, 322
 revised, 312ff.
 Remarriage, 147, 173ff., 326
 Remedies for divorce, conservative,
 432ff.
 constructive, 446ff.
 radical, 435ff.
 reactionary, 429ff.
 Renaissance, 291, 296
 ethical, 322
 Reno, 156, 179
 Reproduction, control of, 438
 Research, needed, 108, 118, 127, 130,
 135, 356, 383, 399, 405, 447
 Revolution, economic, 268
 French, 96, 342, 426
 industrial, 262, 265, 266, 291, 366,
 394, 426
 religious, 317
 sexual, modern, 359ff.
 Richmond and Hall, cited, 198
 Rivers, W. H. R., quoted, 366
 Rogers, E. F., cited, 83, 84
 Rogers, S. L., 101
 Roman Catholic Church, 87, 90, 107,
 211, 248, 312
 position on divorce, 53
 Roman family, 55
 Roman law, early, divorce in, 54ff.
 Romantic attitude, 342, 344
 Romantic complex, 340ff.
 Romantic concept, fallacy of, 342ff.
 Romantic ideal, 341
 Romantic love, 341ff.
 Roosevelt, President Theodore, quoted,
 189
 Rubinow, I. M., quoted, 353
 Rural divorce rates, 118ff.
 Rural pattern of life, 266, 338
 Russel, I. S., quoted, 282
 Russell, Bertrand, cited, 368
 quoted, 282, 330, 343, 345, 349,
 358, 372
- ## S
- Sacrament of marriage, 85ff.
 Sacraments, definition of, 83, 84
 doctrine of, 82ff.
 rise of, 86
 St. Augustine, doctrine of divorce, 88
 quoted, 83
 St. Paul, teachings of, 80-82, 88, 335,
 336, 338
 St. Peter, teachings of, 81
 St. Thomas Aquinas, 83
 "Scarlet Letter," 336
 Schematization of life, 412, 413
 Schmalhausen, S. D., quoted, 363-364
 Schroeder, Theodore A., cited, 80
 quoted, 276
 Scientific approach, 5, 446
 Scientific interpretation, 10, 11, 320
 Scientific view, 7ff., 317
 Semi-divorce, 449
 Separation, judicial, 89
 legal, 431
 Sex, agitation, 373
 antagonism, 377
 attitudes, perversion of, 370
 revised, 366
 -behavior factors, 375
 biological urge of, 359
 biology of, 361
 -capital, bartering of, 276
 characters, secondary, 361
 consciousness, 360, 363, 364
 desires, more involved, 365
 differences, 375-376
 disabilities of, 29, 283, 308
 ethics, revised, 358
 experience, antenuptial, 331, 354,
 356ff., 436
 extramarital, 349, 354, 357
 experimentalists, 453
 experimentation, 354, 358, 363

- Sex, exploitation of, 363
 extraprocreative functions of, 355,
 357, 361, 365, 377
 frenzy, 387
 frustrations, 385
 functions, ignorance of, 381-382
 subversion of, 372
 hormones, 369
 greater rôle of, in marriage, 367
 instruction, inadequacy of, 367ff.
 perversion of, 370ff.
 knowledge, taboo on, 368
 licence, 444
 -life, normal, 365
 -mindedness, 363
 morbid attitudes toward, 357, 372
 needs, lack of understanding of, 373ff.
 obsession, ultra, 385ff.
 obsessions, 357
 orientation, 362
 physiology, 368, 369
 preoccupation, 356
 psychology, 361, 368, 369
 relation, impurity of, 81, 371
 repression, injurious, 366, 367
 revolting character of, 361
 sampling, 358
 urge, 357
- Sexes, equality of, 350
- Sexual, anesthesia, 372
 behavior, 336, 354
 complex, 375
 disharmony, 379
 erethism, 379
 factor in divorce, 383ff.
 in marriage, 364ff.
 incompatibility, 380ff.
 maladjustment, 359ff., 369, 383, 391
 morbidity, 364
 promiscuity, 355ff., 444
 revolution, modern, 359ff.
- Shaler, N., cited, 204
- Shammai, school of, 46
- Shotwell, James T., quoted, 317-318
- "Single blessedness," 279
- Slaten, Rev. A. W., quoted, 331
- Smith, A. H., quoted, 282
- Smith, Munroe, quoted, 58
- Smith, W. G., cited, 430
- Smyth, Rev. Newman, quoted, 53
- Snyder, W. L., 188
- Social adaptation, problem of, 262ff.
- Social change, causes of, 8
 irreversible, 310
- Social costs, 348
- Social distance, 399
- Social gain, 287
- Social institutions, 420ff.
- Social misfits, 402-403, 405
- Social order, bulwarks of, 4
- Social scientists, view of, 6
- Social unrest, 305, 321
- Social workers, 434
- Society, dynamic character of, 5
 study of, 8
- Solomon, 337
- Spencer, Rev. Anna G., quoted, 327, 337
- Spencer, Herbert, 7, 19
 quoted, 22, 162, 452-455
- Spencer and Gillen, cited, 24
- Stage, sex-ridden, 363
- Standard of living, modern, 271ff., 399
- Stanton, Elizabeth C., quoted 197-198,
 202
- States Rights doctrine, 207
- Statistics, chief service of, 250
 comparative, 141ff.
 of divorce in United States, 103ff.
 inadequacy of, 250
 sources of, 100ff.
- Stetson, Charlotte P. (Gilman), quoted,
 280
- Steuart, W. M., 101
- Stevens, Judge, quoted, 251
- Stopes, Marie C., cited, 377
 quoted, 93, 365-366, 378-379
- Strampf, H. L. von, quoted, 93
- Suicide, 270
- Sumner, William G., quoted, 36, 79
- T
- Tacitus, quoted, 59-60
- Talmud, 44, 76
- Tenement house problem, 274

Tensions, bipolar, 396
 internal, 390
 versus pressures, 390ff.
 Tertullian, quoted, 81, 82
 Theology, dogmatic, 10
 new, 317, 324
 Thomas, William I., quoted, 412
 Thomas and Znaniecki, quoted, 411
 Thwing, Charles F., quoted, 90-91
 Torah, 44, 47, 49, 52
 Transition, problem of, 426ff.
 Trend of divorce, 103ff.
 in United States, 100ff.
 secular, 99
 significance of, 106ff.
 variations of, 112
 Trial marriage, 23, 436ff.
 psychology, 440, 441
 Truesdell, L. E., 101
 Twelve tables, divorce in, 55

U

Ultra-liberals, 436
 Ultra-sex obsession, 386ff.
 Ungren-Sternberg, Leonie, quoted, 458
 Uniform divorce laws, 188ff.
 congress on, 189ff., 200
 Uniform marriage and divorce laws,
 187ff.
 Urban divorce rates, 118ff.

V

Venereal diseases, 356, 405
 Vesalius, 316
 Virtue, content of, 320
 Volstead Act, 293
 Voluntary parenthood, 352ff.

W

Wallace, William K., quoted, 7-8,
 318-320

Warrick, La Mar, quoted, 387-388
 Westermarck, Edward, cited, 12, 26, 62
 quoted, 21, 23, 31, 56, 58, 75-76
 White, Mrs. Edward F., 199
 quoted, 203-204
 Willcox, Walter F., cited, 312-313
 quoted, 108-109, 125, 126, 174, 183,
 185, 299, 302
 Wilson, President Woodrow, 217
 Wissler, Clark, cited, 20, 32
 quoted, 24, 32
 Woman's movement, 307
 Woman's sphere, 283, 337
 Women, American, morality of, 253,
 309
 ascetic views on, 81ff.
 economic emancipation of, 280ff.
 fixed status of, 337
 freedom of, 283, 348-349, 412, 430
 gold-digger type of, 441
 improved social status of, 306ff.
 in industry, 283, 286
 love needs of, 308
 new economic status of, 284
 new freedom of, 348
 property rights of, 282
 sex needs of, 366
 sexual nature of, 375-376, 378
 social inferiority of, 329
 World view, dualistic, 317
 scientific, 5
 World War, 101, 293, 363
 effect on divorce, 111
 effect on sex problem, 363
 Wright, Carroll D., 100, 125, 180
 quoted, 101, 123

Z

Znaniecki, Florian, quoted, 411
 Zwingli, 98

